

## I. INTRODUCTION

In the early morning hours of December 26, 2015, Chicago Police Department (CPD) Officers A and B responded to a domestic disturbance call involving a male armed with a baseball bat. Upon arrival, Officers A and B approached the residence and rang the doorbell. A female, now known to be first-floor resident Subject 1, opened the door. Within seconds of Subject 1 opening the door, Subject 2 (Subject 2) came down the second-floor stairway toward the officers. Subject 2 opened the door with an aluminum baseball bat in hand. Officers A and B retreated down the exterior stairs and Officer A discharged his weapon, striking Subject 2 several times. Subject 1 was also struck by gunfire. EMS transported Subject 2 to John H. Stroger, Jr. Hospital and Subject 1 to Loretto Hospital. Both victims passed away.

## II. ALLEGATIONS

It is alleged by Civilian 3, in Civil Suit 2015LXXXXXX, that on December 26, 2015, at approximately 4:25 a.m., at XXXX W. Erie Street, **Officer A, #XXXXX**, while on duty:

1. Shot Subject 2 without justification; and
2. Failed to provide Subject 2 with medical attention.

It is further alleged by Civilian 13, in Civil Suit 2016LXXXXXX, that on December 26, 2015, at approximately 4:25 a.m., at XXXX W. Erie Street, **Officer A, #XXXXX**:

3. Fired multiple times into a home occupied by persons who would be at risk of injury or death;
4. Fired in the direction of Subject 1, which resulted in her death;
5. Shot Subject 1 without justification; and
6. Failed to provide Subject 1 with medical attention.

It is further alleged by COPA that **Officer A, #XXXXX**:

7. Failed to ensure that his taser certification was current from, on or about, February 06, 2014, through, on or about, March 16, 2016.

## III. INVESTIGATION

The Civilian Office of Police Accountability's (COPA)<sup>1</sup> conducted a two-year investigation into this incident. The following is a summary of the most relevant evidence, including:

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<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this

Department Reports, Chicago Fire Department Reports, photographs, witness interviews, physical evidence, medical records, and a brief account of Subject 2's mental health history. The evidence outlined in this report formed the basis of COPA's analysis and findings in this matter.

## DEPARTMENT REPORTS

### *Crime Scene Processing Reports*

The **Chicago Police Crime Scene Processing Report** recorded under **Report Number XXXXXX**, lists evidence collected on scene and inventoried. Such items include but are not limited to seven (7) expended shells, two (2) fired bullets, a key ring with two keys, and a 28" / 23 oz "Hostess" aluminum baseball bat. Blood swabs were collected from the carpet near the apartment front entrance and inventoried. Additionally, Officer A's firearm was processed and swabbed for DNA, collected and inventoried. The report further documents that the scene was video-taped, photographed, and searched for physical evidence as noted above. A not to scale field sketch diagram was drawn.

Forensic Investigator 1 relocated to Loretto Hospital where he learned that Subject 1 died. A visual examination of the body revealed an apparent gunshot wound to the chest. Subject 1's body was photographed and fingerprinted for identification purposes. Forensic Investigator 1 subsequently went to Stroger Hospital where he learned that Subject 2 died. A visual examination of the body revealed multiple gunshot wounds to the back, right hip, right buttocks, and left chest area. Subject 2's body was photographed and fingerprinted for identification purposes. (Att. 17)

The **Crime Scene Processing Report** for RD #XXXXXXXXX indicates that Officer A's Smith and Wesson M&P 9mm semi-automatic pistol was recovered with a seventeen (17) round capacity in the magazine. There were nine (9) live rounds of ammunition in the magazine, and one (1) live round of ammunition in the chamber. Seven fired cartridge cases were recovered from the sidewalk, parkway, and front yard of XXXX W. Erie Street. The aluminum baseball bat reportedly used by Subject 2 was also recovered from the vestibule floor. (Att. 17)

The **Chicago Police Crime Scene Processing Report** recorded under **Report Number XXXXXX**, lists items collected and inventoried from the morgue. The items include a sealed envelope marked "DNA" card (ME# 2015-XXXXXX Subject 2 [sic]); Received from ME Doctor 1, a red short-sleeve medium t-shirt, blue large size Nike shorts, a sealed swab box marked "Oral Swab", (ME# 2015-XXXXXX Subject 2 [sic]); Received from ME Doctor 1, and three (3) sealed bullet envelopes marked (ME# 2015-XXXXXX Subject 2 [sic]); Received from ME Doctor 1. (Att. 20)

The **Chicago Police Crime Scene Processing Report** recorded under **Report Number XXXXXX**, lists items collected and inventoried from the morgue. The items include a sealed envelope marked "DNA" card (ME# 2015-XXXXXX Subject 1 [sic]); Received from ME Doctor

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investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

1, one (1) sealed bullet envelope marked (ME# 2015-XXXXXX Subject 1 [*sic*]); Received from ME Doctor 1, and a sealed swab box marked “Oral Swab”, (ME# 2015-XXXXXX Subject 1); Received from ME Doctor 1. (Att. 21)

The **Chicago Police Crime Scene Processing Report** recorded under **Report Number XXXXXX**, detailed the request by IPRA personnel to take additional photographs of the building and interior photographs of the second-floor apartment. Attorney 1 was on scene and listed on this report. IPRA personnel also requested bullet trajectory readings for the apparent bullet damage in the front door of the building. Forensic Investigators marked and photographed the apparent bullet damage but attempts at trajectory readings were unsuccessful. (Att. 64)

The **Chicago Police Crime Scene Processing Report** recorded under **Report Number XXXXXX**, lists items collected by the FBI at IPRA’s request. The items include two (2) bottles of prescription drugs, one of which was labeled Lorazepam (60 count; 35 white pills remaining in bottle) and the other Aripiprazole (30 count; 17 pink pills remaining in bottle). Both items were photographed and inventoried. (Att. 232)

#### ***Tactical Response Reports/Officer Battery Reports***

Officer A’s **Tactical Response Report (TRR)** indicates that Subject 2 did not follow verbal direction, posed an imminent threat of battery, attacked with a weapon, and used force likely to cause death or great bodily harm by using a baseball bat. He added that the subject, Subject 2, attempted to strike the responding officers with a baseball bat. Officer A responded with member presence, verbal commands, and the discharge of his firearm. (Att. 7)

Officer A’s **Battery Report (OBR)** documents that on the date, time, and location of the incident, Officer A was in uniform, investigating the report of an ambush with no warning, a suspicious person, and domestic disturbance. Subject 2 “attacked officers by swinging an aluminum baseball bat.” Officer A did not sustain any injuries. (Att. 8)

Officer B’s **Tactical Response Report (TRR)** indicates that Subject 2 did posed an imminent threat of battery, attacked with a weapon, and used force likely to cause death or great bodily harm. He added that the subject, Subject 2, attempted to strike the responding officer with a baseball bat. Officer B responded with member presence and verbal commands. (Att. 9)

Officer B’s **Battery Report (OBR)** documents that on the date, time, and location of the incident, Officer B was in uniform, investigating the report of an ambush with no warning and a domestic disturbance. The subject, Subject 2, had an aluminum baseball bat. Officer B did not sustain any injuries. (Att. 10).

The Chicago Police Department **Inventory Sheets** document the recovery and inventory of all evidence recovered during the course of the investigation. This evidence includes the baseball bat located in the vestibule, Subject 2’s clothing, a key ring with two keys, one fired bullet, expended shell casings, Officer A’s firearm, pill bottles containing suspect medication, and other biological items. (Atts. 23, 67, 68, 69, 233)

***Case Supplementary Reports***

The **Chicago Police Department Case Supplementary Report- Field Investigation Re-classify Report, RD# XXXXXXXX**, submitted by Detective A #XXXXXX, on January 4, 2016, detailed the re-classification of the Original offense of Assault / Aggravated: Other Dangerous Weapon to the re-classification offense of Assault / Aggravated PO: Other Dangerous Weapon. (Att. 76)

The **Chicago Police Department Case Supplementary Report- Field Investigation Progress- Violent (Scene) Report, RD# XXXXXXXX**, submitted by Detective A, #XXXXXX on 04 January 2016, documents the details surrounding the incident, the involved parties, injuries which the victims/subjects sustained, property/items that were inventoried, photographs that were taken, video recovered and witnesses that were spoken with during a canvass conducted by CPD personnel. The report documents that Officer A and Officer B were answering a disturbance call when the offender attacked them with a baseball bat before being shot and killed by one of the officers.<sup>2</sup> Detective A interviewed Subject 1's boyfriend Civilian 5, Subject 2's father Civilian 3, Subject 1's daughter Civilian 1, Officer A, Officer B. Relevant portions of these interviews will be detailed as necessary in the analysis of this case. (Attachment 77)

The **Chicago Police Department Case Supplementary Report- Morgue Report, RD# XXXXXXXX**, submitted by Sergeant A on March 21, 2016, documents that on December 27, 2015 Doctor 1 performed an autopsy on the remains of Subject 1 and determined the cause and manner of death to be a gunshot wound (GSW) of the chest and the manner being Homicide. An external examination revealed a single gunshot wound to the center chest. (Att. 238)

The **Chicago Police Department Case Supplementary Report- Morgue Report, RD# XXXXXXXX**, submitted by Sergeant A on March 21, 2016, documents that on December 27, 2015 Doctor 1 performed an autopsy on the remains of Subject 2 and determined the cause and manner of death to be multiple gunshot wounds (MGSW) and the manner being Homicide. An external examination revealed GSW numbered #1 entered the left inner elbow and exit the left inner bicep, GSW numbered #2 entered the left ribcage and lodged, GSW numbered #3 entered the small of the back just off-center and lodge, GSW numbered #4 entered the right buttock, lodge and partially exit the right hip, a graze wound to the right upper back, and a graze wound to the left rib cage. (Att. 239)

The **Chicago Police Department Case Supplementary Report- Closed Non-Criminal, RD# XXXXXXXX**, submitted by Detective A received and viewed three discs with in-car camera recordings for Beat XXXX, vehicle #XXXX. The video did not capture anything significant relating to this investigation. Detective A documented that on January 25, 2016, he received a second disc containing 911 recordings. The disc contained two calls to 911 from Subject 2 and one call of shots fired that were not previously noted. The calls were summarized in this report. Please see the audio attachments of said calls for details. Detective A searched the department

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<sup>2</sup> The **Chicago Police Department Case Supplementary Report- Field Investigation Exc. Cleared Closed (Other Exceptional) Report, RD# XXXXXXXX**, submitted by Detective A on 04 January 2016, documents that the investigation was Exc. Cleared Closed- death of the offender. The report indicates that the details of the investigation are detailed under the Justifiable Homicide Report, RD# XXXXXXXX. (Att. 78)

databases for the callers' subscriber information. The information revealed that the telephone number used by Subject 2 was an un-provisioned number that was never set up to make telephone calls, however the telephone had the ability to call 911. The single call came back to a Civilian 2. Detective A called Civilian 2 multiple times and left a voice message with negative results.

Detective A documented that the investigation revealed that Officer A was justified in his use of deadly force against Subject 2 when he shot and killed Subject 2 to prevent death or great bodily harm to himself. During the assault, Subject 1 was accidentally shot and killed. Detective A noted that based on the above facts and circumstances, the deaths have been determined to be non-criminal in nature and requested that the case be Closed Non-Criminal. (Att. 313)

## **CHICAGO FIRE DEPARTMENT (CFD) REPORTS**

The **Chicago Fire Department Ambulance Report for Subject 2** documents that EMS personnel arrived at XXXX W. Erie Street on December 26, 2015, at 0444. They found Subject 2 lying on his back in the doorway of the residence with multiple gunshot wounds, including a gunshot wound to his chest. Subject 2 was pulseless, unresponsive, and had massive bleeding. EMS personnel initiated resuscitation and CPR per policy requirements. Subject 2 was transported to Stroger Hospital, and there was no change in his condition during the drive in the ambulance. (Att. 18)

The **Chicago Fire Department Ambulance Report for Subject 1** documents that EMS personnel arrived at XXXX W. Erie Street on December 26, 2015, at 0447. They found Subject 1 sitting with a gunshot wound to her sternum. Subject 1 was pulseless and cold to the touch. EMS personnel assessed that Subject 1 was dead on arrival. Subject 1 was transported to Loretto Hospital. EMS personnel noted that there was a large crowd gathering at the scene, and the crowd was hostile. (Att. #19)

## **CHICAGO FIRE DEPARTMENT (CFD) STATEMENTS**

In a statement to IPRA taken on **January 22, 2016**, Chicago Fire Department (CFD) Ambulance Commander 1 stated that on the date and time of incident, he was assigned to ambulance 15, which is stationed at the firehouse located at XXXX W. Chicago Avenue. Ambulance Commander 1 stated that he was in the fire house with his partner, Paramedic 1, when his company was dispatched to the location of the incident. Ambulance Commander 1 stated that Engine XXX, which is stationed at the same firehouse, and Ambulance XX, which is stationed in a neighboring firehouse, were also dispatched. Ambulance Commander 1 explained that he and his partner grabbed their equipment, to include a stretcher and a stair chair<sup>3</sup>, and proceeded to the front of the building where the incident took place.

Ambulance Commander 1 stated that he walked up the front porch and found a male victim "kinda layin' back on top of a female victim"<sup>4</sup> in what he described as a domino effect, with his

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<sup>3</sup> Ambulance Commander 1 explained that a stair chair is a portable folding contraption that can help convey patients back and forth.

<sup>4</sup> Statement of CFD Ambulance Commander 1, page 10, lines 7-10.

head laying at about her knees and his feet slightly behind the threshold of the exterior door. Ambulance Commander 1 stated that neither Subject 2 nor Subject 1 showed any signs of life on their initial arrival.

Ambulance Commander 1 explained that with the help of a couple of the firemen, they moved Subject 2 from the doorway, down the stairs and onto the stretcher. As his partner, Paramedic 1, and Lieutenant A placed Subject 2 in the ambulance, Ambulance Commander 1 placed Subject 1 on the stair chair and took her to Ambulance 23.

Ambulance Commander 1 explained that when Subject 2 was moved, Ambulance Commander 1 observed an aluminum baseball bat on the left side of Subject 2's body, as if he was partially laying on it. Ambulance Commander 1 explained that Subject 2 had some electrical activity in his heart, and required full traumatic arrest treatment.

Ambulance Commander 1 stated that while in the ambulance providing treatment to Subject 2, Paramedic 2 informed him that they were transporting Subject 1 to Loretto Hospital to have her pronounced deceased.

Ambulance Commander 1 stated that he did not learn that the incident was a result of an officer-involved shooting until he returned to the firehouse and watched it on the news. He stated that he found it odd that no one informed him of such but explained that the CFD would not have changed their actions if they had known this information.<sup>5</sup> (Atts. 111, 113)

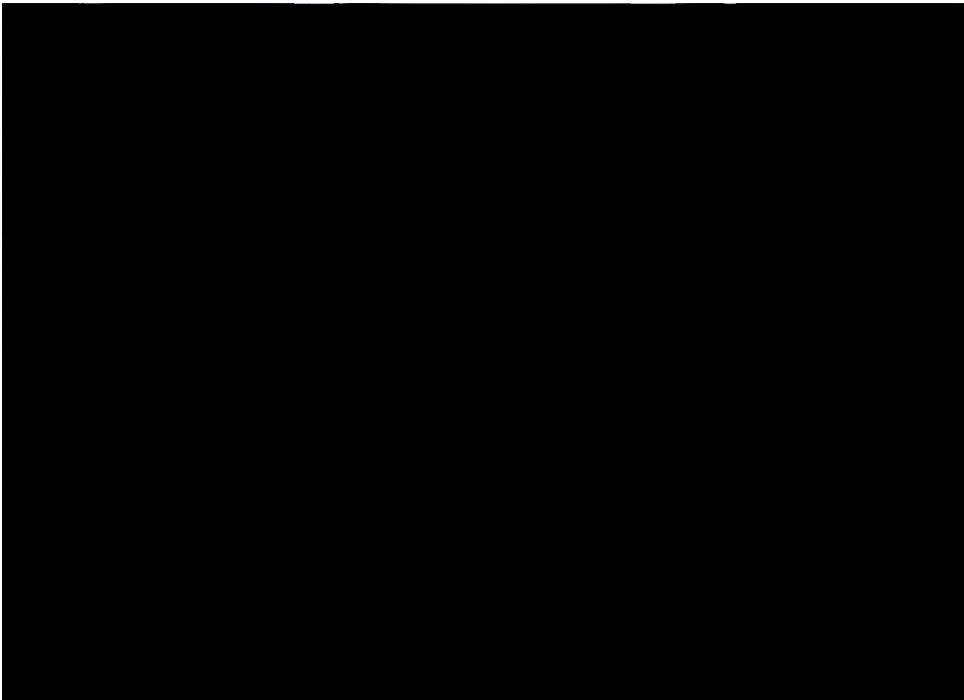
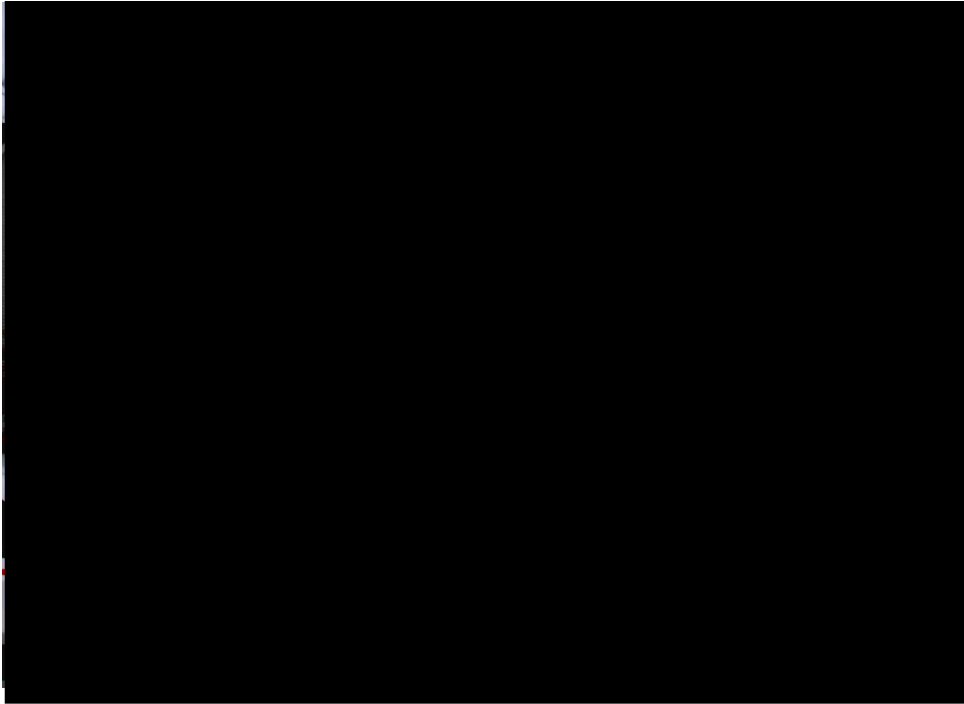
IPRA also took statements from Paramedics 2, 3 and 4; Firefighters 1 and 2; Firefighter/EMTs 1 and 2; and Chicago Fire Department Lieutenant 1. Relevant portions of these interviews will be detailed in the analysis section of this report as necessary. (Atts. 119, 121, 115, 117, 128, 130, 164, 166, 142, 144, 146, 148, 150, 152, 225, and 227)

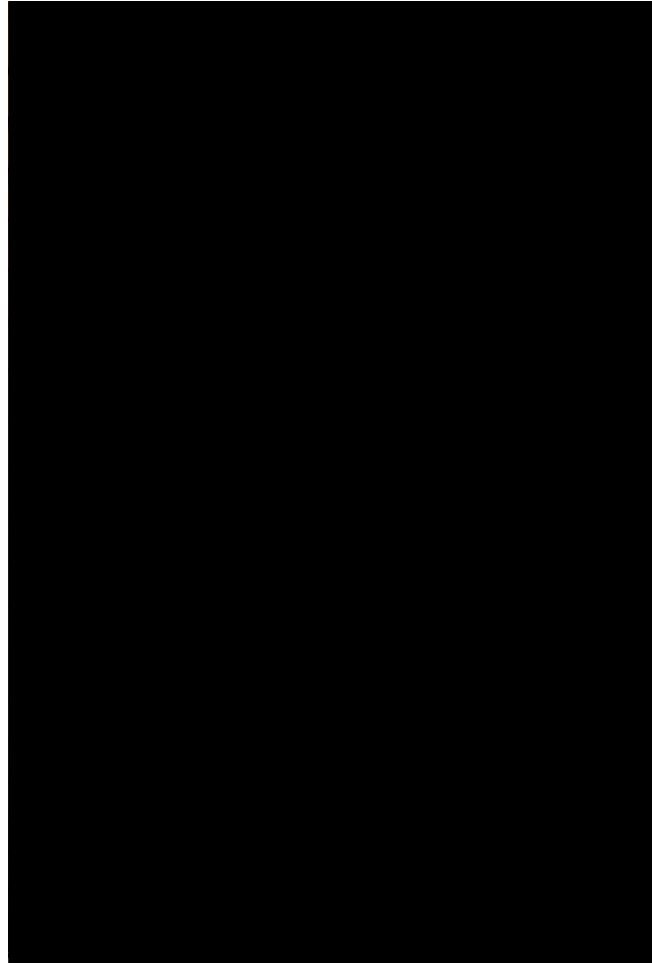
## PHOTOGRAPHS

The **Evidence Technician's Photographs**, taken on December 26, 2015, depict the exterior and interior of XXXX W. Erie Street, the exteriors of surrounding residences, the street, the locations of the bullet casings, the locations of bullet holes in the exterior and interior of XXXX W. Erie Street, Subject 2's wounds, Subject 1's wounds, and Officer A. (Atts. 60, 105). A sample of the photos of the scene is as follows.

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<sup>5</sup> Ambulance Commander 1 gave a second statement to IPRA on January 26, 2016. Relevant details of the follow up statement will be discussed in the analysis as necessary. (Atts. 132, 134)





The **Medical Examiner's Photographs of Subject 2**, taken on December 27, 2015, show the three bullets recovered from Subject 2's right hip, right shoulder, and lumbar spine. The photographs also depict Subject 2's clothes and Subject 2's wounds. There are bullet wounds on his right hip, upper left abdominal area, right buttocks, and a large graze wound on his back near his right shoulder. (Att. 106)

The **Medical Examiner's Photographs of Subject 1**, taken on December 27, 2015, show the bullet recovered from the left side of Subject 1's back. The photographs also depict Subject 1's bullet wound, located in the middle of her chest, and her clothing. (Att. 107)

## **CIVILIAN STATEMENTS**

In a **statement to IPRA on December 26, 2015, Civilian 3** stated that his son, Subject 2, was staying with him in his apartment at XXXX W. Erie for approximately one and a half weeks before the shooting. Subject 2 was home from college for the holiday break. Civilian 3 explained that his son had recently been experiencing some mental changes, which he believed were due to a medical condition. Civilian 3 said that approximately four months prior, doctors at Weiss Hospital had told Civilian 3 that Subject 2 had a chemical imbalance due to some type of muscular



injury, and the imbalance was temporarily causing a mental state similar to schizophrenia. Subject 2 was prescribed medication but had recently stopped taking his medications under the direction of his mother, Civilian 4.

Civilian 3 stated that Subject 2 had been angry in the last few days, primarily due to his relationships with both his mother and his foster parent. On Christmas Eve, Civilian 4 came to pick up Subject 2. After she dropped him off at home the next morning, Subject 2 told Civilian 3 that he had “unleashed all that rage, not the physical but verbally.” Subject 2 told Civilian 3 that he had an “outbreak” or “breakthrough” and felt much better after speaking with his mother, also stating that “she can’t control me no more” and “I’m God.” Civilian 3 attempted to calm his son down, but explained that he had other commitments during the day.

Three days before the shooting, Civilian 3 noticed that the baseball bat that he kept in the bathroom was missing. He did not know where it was, but assumed Subject 2 had moved it and told him to put it back. He believed that Subject 2 was angry and had heard Subject 2 pacing around the apartment late at night for the week leading up to the shooting. Subject 2 would sometimes knock on Civilian 3’s bedroom door, and Civilian 3 stated that he put a 2x4 piece of wood by his door to bolt it because he “ain’t know what his [Subject 2’s] intentions were” and did not want Subject 2 to be able to enter his bedroom while he was sleeping.

Civilian 3 left the apartment on Christmas day to spend time with different family members and arrived home at approximately 1 a.m. on December 26, 2015. When he returned, he heard yelling at the apartment and realized it was coming from his unit. He found Subject 2 standing in the living room and attempted to calm him down. Subject 2 went to sit on the couch, and Civilian 3 went to bed. After he fell asleep, Civilian 3 woke up to the sound of Subject 2 hitting his bedroom door. He called 911 and requested police assistance. Civilian 3 called his downstairs neighbor Subject 1 to inform her that he called the police because of a dispute with Subject 2, and to listen out for the police. Subject 2 began tapping on Civilian 3’s door with a baseball bat but soon left to go downstairs.

Civilian 3 stated that he was on his way downstairs after hearing that Subject 2 had walked away and was about halfway down the stairs when he heard Subject 1 say “hey, hey, hey” and then the “pop, pop, pop, pop, pop, pop, pop, pop” of rapid gunfire. He proceeded downstairs and saw Subject 2 lying face-down in Subject 1’s doorway. The officers instructed him to put his hands up, and he began asking “is everyone okay?” Civilian 3 stated that he then heard one of the officers say, “oh shit, oh shit, what the F. What the F, oh god.” The officer then said, “I saw a baseball bat, I thought he was gonna lunge at me.” Civilian 3 stated that he believed the officer “saw a bat [and] he just started shootin’ randomly,” although he did not actually witness the shooting because both the officer and Subject 2 were still out of sight as he descended the stairs. Civilian 3 also stated that he believed the shooting officer was 30 feet away when he shot at Subject 2 based on where the officer was standing as he finished coming down the stairs, and his belief was confirmed after he saw the location of the bullet casings as officers escorted him from his home a few hours after the shooting had occurred. He explained that given the distance between the officer and Subject 2 and Subject 2’s thin frame, there was “no immediate threat” to the officers and the officer was “shooting blindly.” (Att. 44)

On December 26, 2015, **Subject 2 placed three calls to 911**. During his first call on December 26, 2015 at 4:18 a.m., Subject 2 spoke to a dispatcher and stated that he needed an officer at his address. The dispatcher asked, "What's wrong?", to which Subject 2 replied that he just needed an officer. The dispatcher told Subject 2, "it doesn't work like that" ... and again the dispatcher asked about the nature of the emergency. Subject 2 again stated that he needed an officer and that someone was threatening his life. The dispatcher asked if the person was there with Subject 2, to which he responded "Yes."

The dispatcher asked Subject 2 his name to which he responded "Q". He again pleaded for the dispatcher to send an officer. The dispatcher said that she would send an officer after Subject 2 answered her questions. Subject 2 stated "There's an emergency!", to which the dispatcher said that if Subject 2 could not answer the questions, she would hang up. Subject 2's last words to the dispatcher during this call were "I need the police!" The dispatcher responded by terminating the call.

Two minutes later, at 4:20 a.m., Subject 2 called 911 again. He asked the dispatcher who answered if the police were sent. The dispatcher asked Subject 2 his location to which he responded with his address and asked, "Can you please send the police?" The dispatcher asked Subject 2 whether it was a house or an apartment and he responded with his address again. The dispatcher repeated the original question and Subject 2 said that it was a house and asked again "Can you please send the police?" The dispatcher then asked Subject 2 for his name to which he responded, "Can you please send the police!" The dispatcher responded "After you tell me what's going on. What's your name?" Subject 2 stated one last time "Can you please send the police?" After which the call ended.

Subject 2 called 911 a third time one minute after his previous call at 4:21 a.m. He immediately stated after the dispatcher answered, "Can you please send the police?" The dispatcher asked, "To where?" to which Subject 2 responded with his address. The dispatcher asked Subject 2 "What is wrong?" and he responded that there is an emergency. The dispatcher stated, "I need to know what's wrong." Subject 2 responded "Someone's threatening my life." The dispatcher asked who is threatening Subject 2's life, and where they are now. Subject 2 responded that the person is at his house. The dispatcher asked Subject 2 his name, to which he responded "Q."

The dispatcher asked, "Where they gonna meet you?" and Subject 2 responded "Are you gonna send the police already? Fuck this nonsense lady!" The dispatcher asked Subject 2 if he was at the house. Subject 2, audibly frustrated, used profanity and stated, "Fuck it (inaudible) they, shit, (inaudible)." The dispatcher asked again "Are you at the house?" Subject 2's response was inaudible. The dispatcher said "Hello?" and Subject 2 said "There's something wrong with you."

The dispatcher said "Hello? Do you need the police or no? Hello?" Subject 2 responded, "Are you gonna send the police or not?" The dispatcher then asked, "You gonna answer my question?" Subject 2 said, "Fuckin' talkin' to me?" The dispatcher said "I'm talking to you. If you can't answer the questions, how do you expect me to assist you?" Subject 2 responded, "Already told you I'm at the house." The dispatcher stated that Subject 2 did not convey this information and asked if any weapons were involved to which Subject 2 responded "Naw."

The dispatcher then asks, "Where are you gonna be?" and Subject 2 responds, "Folk, fuckin' playin' with me." The dispatcher says, "Hello?" Subject 2 stated, "Stop fuckin' playin' with me." The dispatcher then stated, "Are you talkin' to me or someone else 'cause my name ain't folk?" The call ended. (Atts. 14, 15, 54, 93, 94, 95, 527)

On December 26, 2015, **Civilian 3 placed a call to 911**. The call was placed at 4:24 a.m., three minutes after Subject 2's third call to police. The police were not dispatched after any of Subject 2's calls. When the dispatcher answered, Civilian 3 asked the dispatcher to send the police to his address. The dispatcher asks Civilian 3 what happened. His response is inaudible. The dispatcher asks whether the residence is a house or apartment and Civilian 3 responds that it's a house and he is on the second floor. The dispatcher asks if any weapons are involved and Civilian 3 states that his son has a baseball bat. The dispatcher asks how old Subject 2 is and Civilian 3 states "19". The dispatcher asks if Subject 2 has been drinking and Civilian 3 says that he does not think so. Finally, the dispatcher asks Civilian 3 for his name, he responds with his first and last name and the dispatcher tells Civilian 3 to watch for the police. The call ends. (Att. 15, 96)

In a **statement to IPRA on December 26, 2015, Civilian 5** stated that he, Subject 1, and her daughter, Civilian 1, had been living on the first floor of XXXX West Erie Street for approximately three or four years, and their landlord, Civilian 3 "Civilian 3," lived upstairs. Civilian 5 did not have any contact with Subject 2 in the days prior to the incident.

Civilian 5 explained that he and Subject 1 were in bed asleep when she received a call from the landlord. The landlord asked her to open the front door for the police because he was having problems with his son upstairs. Civilian 5 told Subject 1 not to open the door because whatever was going on between Subject 2 and Civilian 3 was "Civilian 3's business and his son." Subject 1 continued to look out the window waiting for the police officers.

When the officers arrived, they rang the doorbell and knocked on the door. Subject 1 went to open the door, and, upon hearing the knocking, Subject 2 came running down the stairs. Civilian 5 was still in his bedroom and did not see Subject 2 come down the stairs nor witness the shooting. He estimated that he heard six or seven shots. He did not hear any verbal commands from the officers prior to the shots, but afterwards heard the officers direct him and Subject 1's daughter, Civilian 1, to put their hands in the air as they attempted to approach Subject 1. Civilian 5 stated that the officers did not allow him or Civilian 1 to approach Subject 1 before the ambulance arrived. When he first saw Subject 1, she was on the ground shaking. Subject 1 was lying on her back and Subject 2 was face-down with his head at Subject 1's feet. There was a baseball bat beside Subject 2.

When Civilian 5 initially looked out of the door after the shooting, he could see two or three officers in uniform on the sidewalk, close to the street. (Atts. 36, 38, 39, 56, 167, 215)

In a **statement to IPRA, taken on 21 January 2016, Civilian 4** stated that she is the biological mother of Subject 2. Civilian 4 explained that at about five (5) years of age, Subject 2 was taken into foster care and he lived with his foster mother, Civilian 6 for most of his life.

Civilian 4 stated that Subject 2 stayed with her a few days during his Christmas break from school. Civilian 4 explained that Subject 2 had been acting “different” during this visit and elaborated that he was “more vocal” compared to his normal quiet demeanor. Civilian 4 explained that she would catch Subject 2 talking to himself, at times referencing himself to be “God.”

Civilian 4 stated that in September of 2015, Subject 2 had been hospitalized for something related to his kidneys. During hospitalization, Subject 2 was psychologically evaluated and prescribed medication, which Civilian 4 could not remember the names of the medications on the date of the interview. Civilian 4 explained that Subject 2’s college friend, Civilian 7, informed her that Subject 2 acted “aggressive” and “loud” while he was on the medication and in turn, she [Civilian 4] asked Civilian 7 to take the medication away from Subject 2. Civilian 4 stated that during Subject 2’s winter break visit, she was under the assumption that he was no longer taking the medications.

Civilian 4 also reported that she believed Civilian 3 was molesting Subject 2 and therefore asked the Medical Examiner to conduct further testing on him. (Atts. 123, 126)

## **CPD OFFICER STATEMENTS<sup>6</sup>**

In a **statement to IPRA on July 26, 2016, Detective A #XXXXXX** stated that he was assigned to the police-involved shooting at XXXX West Erie Street. Detective A arrived at XXXX West Erie Street at approximately 5:05 am. He noted that there were already several cars in the area and that the two victims had already been removed.

Detective A first spoke with Lieutenant B, who gave him a summary of what had occurred. Detective A then noted Officers A and B sitting in the front seats of a squad car. He approached them and asked if they needed anything before surveying the scene. He noticed three shell casings on the sidewalk, two shell casings in the parkway, and one shell casing in the grass. Detective A also observed blood on the stairs, porch, and vestibule of the house. The aluminum baseball bat and a set of keys were in the vestibule area.

Detective A first spoke with Civilian 5 and later interviewed Civilian 3. Those conversations are documented in a Detective’s Supplementary Report<sup>7</sup>. Detective A then spoke with Officers A and B individually.

After departing from the scene, Detective A went back to the station and interviewed Civilian 3 and Civilian 1. These conversations are documented in a Detective’s Supplementary Report<sup>8</sup>. Civilian 3 also added that he was on the stairs when he heard the gunshots and, after the shots had stopped, he looked down and saw an officer approximately 30 feet away from the door crouching with his gun drawn. Civilian 3 stated that he heard one of the officers say “I thought he was going to lunge at me. Oh, fuck. No. No.”

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<sup>6</sup> IPRA took statements from Officers C, D, E and F, Sgt. Sergeant B, and Lieutenant B. Relevant portions of these interviews will be incorporated into the analyses as necessary. (Atts. 247, 248, 250, 251, 290, 291, 366, 367, 408, 409, 446, 463, 464, 293, 294, 456, 457, )

<sup>7</sup> Captured in attachment 77.

<sup>8</sup> Captured in attachment 77.

On December 28, 2015, Detective A brought Officers A and B back to the station for a second interview. These conversations are documented in a Detective's Supplementary Report<sup>9</sup>. Detective A noted that there were some differences in Officer A's statement. In his first statement, Officer A stated that Subject 1 went back to her apartment. In the second interview, Officer A stated that Subject 2 positioned himself between Officer A and Subject 1. In the second interview, Officer A also added that Subject 2 was swinging the bat, specifically downward and then upward again. Officer A maintained that he had given Subject 2 verbal commands. (Att. 412)

In a **statement to IPRA on January 4, 2016, Officer B, #XXXXX**, stated that he was on-duty and in uniform on December 26, 2015. Officer B was working beat XXXXX, a marked van, with Officer A. Officers A and B received a call over the radio, also transmitted through the PDT, of a domestic disturbance. Officer B recalled the message stating that a male caller said that his son was beating on his bedroom door with a bat. The message also stated that the son had called, but Officer B believed that his call was "a lil messed up." When asked to explain, Officer B stated that the call "was kinda gibberish." Officers A and B turned on the lights of their van and proceeded toward XXXX West Erie Street.

Officers A and B initially drove the wrong way down Erie Street and parked directly in front of the residence. Officer B stood behind Officer A as he rang the doorbell. Subject 1 quickly came to the door and whispered "upstairs, upstairs" as she gestured upwards. The door opened inwards but she did not open it all the way; Officer B could only see Subject 1's apartment and not the door or stairwell to the right. Though it was still dark outside, there was a light on the front porch and a light in the front hall of the residence. Subject 1 turned and walked back to her apartment.

Officer B recalled seeing a "flash" across the light of the stairway and heard Subject 2 running down the stairs quickly. The door suddenly whipped open and Subject 2 came out with a bat raised above his head. He was holding the bat with both hands, slightly above his right shoulder, "ready to strike down" on the officers. Officer B described the situation as "pure ambush" and described Subject 2 as "combative." He noted that no verbal commands were given because there was not enough time, and that there was "no chance" these commands could have been given. He also explained that the situation unfolded too quickly for the officers to notice any signs of mental health issues or the presence of drugs or alcohol.

Officer A was approximately two feet from Subject 2 when Subject 2 opened the door. Officer B grabbed Officer A's left shoulder and said, "look out." Officer B had one foot on the stairs and one foot on the porch before he looked down and began to retreat down the stairs backwards. He did not see if Subject 2 made any other movements after he looked down and he did not know the distance between Subject 2 and Officer A when Officer A began shooting.

Officer B stated that he started to un-holster his weapon but saw that his partner was already shooting when he looked up. He did not see when Officer A first started firing because he was looking down. He said that when he saw Officer A shooting, Officer A was on the steps and Subject 2 was on the porch. He confirmed that he did actually see Officer A fire some of the shots, though

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<sup>9</sup> Captured in attachment 77.

the shots were so rapid that he did not know how many he observed. He did not know which step Officer A was on when he was firing. Officer B explained that because he was standing behind his partner, he could not fire or he would have struck Officer A. Officer A was backpedaling down the stairs as he was shooting. Officer B was backing up towards the left while Officer A went slightly right. When Officer A had ceased shooting at the bottom of the steps, Officer B had reached the grass close to the sidewalk and Officer A was at the bottom of the steps.

Officer B observed Subject 2 drop the bat, put his hands on his upper body, and say “oh fuck, oh fuck,” before collapsing. Subject 2’s body fell partially in the foyer, with his feet hanging out of the threshold. Officer B denied that Subject 2 turned around and moved forward into the vestibule; instead, he said “[h]e just fell.” Officer B heard the aluminum bat hit the porch and did not know how it ended up in the vestibule. Neither he nor Officer A moved the baseball bat.

Officer B immediately went over the air, saying “shots fired, shots fired.” He believed that Officer A also went over the air. The officers then called for an ambulance. Officer B had initially requested only one ambulance because he could not see Subject 1, but Officer A quickly interjected and stated, “two down.” Officer A had a better view into the vestibule area from the area where he was standing. As the officers were calling for ambulances, within 30 seconds or a minute of the shooting, Officer B heard someone, now identified as Civilian 3, yelling from the building “you did what you had to do, you did what you had to do.” The person then stated, “I’m the father I called.” Officer B could not see this person. Officer B moved to the street behind a car to take cover because Officer B was not sure if anybody else was coming out of the apartment. While Officer B moved behind the car, Officer A had a “lil conversation” with Civilian 3, who was still inside of the house. Civilian 3 asked the officers to call for an ambulance.

Officer A said to Civilian 3, “what the fuck, dad,” as a means of asking Civilian 3 why he would let his son come and “ambush” the officers. Civilian 3 kept repeating “you did what you had to do.”

Officer B kept his gun drawn for “a while” because he did not know if there were any other threats present. He and Officer A instructed Civilian 3 not to move, and Civilian 3 did not come down the stairs until other units had arrived. He noted a male resident on the first floor, but did not speak with him or find out who he was.

Officer B stated that Officer A had no other option than to shoot because he was about to get hit in the head with a baseball bat. Officer B stayed by the sidewalk as he waited for a supervisor, and both he and Officer A were across the street from the residence when the ambulances arrived. Subject 1 and Subject 2 were carried out at the same time. Officers B and A spoke to each other after the incident, but their conversation was limited to making sure the other was alright. He stated that they did not discuss any details of what had just occurred. The officers spoke with their supervisor at the same time. Officer B did not sustain any injuries and was not alcohol or drug tested. He was armed with a 9mm SIG Sauer; Officer B was not equipped with a Taser. (Att. 72)

In a **statement to IPRA on June 29, 2016, Officer A #XXXXX** stated that he began his shift at 10:30 p.m. on the night of December 25, 2015. Officer A was working with Officer B, although Officer B was not his usual partner. Officers A and B were sitting in their squad car when

they received a call for a domestic disturbance. Officer A was the driver of the van. As they exited the vehicle, he recalled Officer B stating that somebody may be armed with a baseball bat, information that Officer A believed Officer B learned from the PDT after receiving the radio call. He responded “okay, got it.”.

Officers A and B reached the location approximately 10 to 15 minutes after receiving the call and observed a two-story house. Officer A knocked and rang the doorbell. A woman, now identified as Subject 1, answered and stated, “it’s upstairs” while motioning upwards. The door opened inwards and Subject 1 opened it slightly. Officer A responded “ok thank you” and Subject 1 retreated into the vestibule area towards her apartment door on the left. Officer A could not see anyone else in Subject 1’s apartment and she did not mention any other residents. He could not recall whether he told Subject 1 to return to her apartment.

In his first statement to detectives, Officer A stated that Subject 1 turned and went back into her apartment. He clarified that, consistent with his second statement, Subject 1 never returned to her apartment after Subject 2 appeared. Seconds later, while Officer A was still standing in the threshold, Subject 2 came charging down the stairs and swung both the door on the right leading to the second-floor apartment and the front door open. He was holding an aluminum baseball bat in his right hand. Officer A began to retreat and instructed Subject 2 to “drop that bat” approximately ten times. As he reached the top step, Subject 2, standing in the threshold, swung the bat downward. Officer B grabbed Officer A’s left shoulder and screamed “watch out” as the officers continued to retreat and Subject 2 advanced towards them. Officer A drew his weapon and, aiming for center mass, began firing from the top step as he retreated, moving the gun from his hip towards his chest. He and Officer B retreated in order to create distance between themselves and Subject 2.

Officer A stated that a total of eight shots were fired. As Officer A was firing, Subject 2 turned, stepped, grabbed his chest and stated, “oh fuck, oh fuck, oh fuck” before collapsing. He fell “face down on his chest” across the threshold of the residence with his torso in the vestibule and his legs in the doorway. Officer A ceased shooting once Subject 2 had fallen. He estimated that he was standing approximately 3 feet away from Subject 2 during the first round of shots and approximately 8-10 feet away from Subject 2 during the last round of shots.

Officer A then noticed that Subject 1, who was on her back with her lower half in the vestibule area and upper half in her apartment doorway, had also been hit when he approached to assess the situation. He stated that he could not see Subject 1 while he was firing because Subject 2 was standing between them and his focus was solely on Subject 2. Officer B was behind a car taking cover when Officer A ceased firing. Officers A and B called for medical assistance over the radio as soon as Officer A had stopped firing.

Officer A continued to hold the other residents of XXXX West Erie Street at gunpoint as they emerged from their apartments to gauge whether they were a threat. He turned to Civilian 3 and said “dad, what the fuck?” Civilian 3 responded by repeating “you did what you had to do” approximately two or three times.” Civilian 1 asked Officer A if she could go to Subject 1. Officer A told her she could do so. She stated that she could feel a pulse on her mother and Officer A directed her to keep talking to Subject 1 and to try and keep her awake. Officer A did not provide

assistance to Subject 2 or Subject 1 because he did not have his gloves and was not a trained medic or EMT.<sup>10</sup>

Officer A stated that he spoke with Officer B to ensure that his partner was “alright,” but they did not discuss any details of what had occurred. Officer A clarified that when he stated, “I fucked up” to Officer G, he meant that he had not intended to injure Subject 1.<sup>11</sup> He stated that “shooting an innocent lady was never my purpose.

Officer A was also asked about a text conversation between himself and a friend where a racial slur was used.<sup>12</sup> Officer A stated the conversation was with Civilian 8, a friend from high school. The texts in question regarded another individual, Officer H, who also attended high school with Officer A and Civilian 8. Civilian 8 asked Officer A in the texts messages if they got any “niggas.” Officer A explained that Civilian 8 was asking him if he and Officer H had arrested anyone, and that Civilian 8 uses the term “nigga” often. Officer A’s response to the text was “sort of lol... Long story.”<sup>13</sup> Officer A also explained that the term “nigga” meant brother or friend in that context, and that he did not take offense to it. It should be noted that neither Officer A nor Civilian 8 identify as black. The term “nigga” has a historically derogatory meaning for black people.

Officer A stated that he has never told Civilian 8 that he is uncomfortable with the word “nigga” but that he does not use it himself. Officer A also explained that he gave an interview to the Marshall Project and said that “the Academy was a joke,” but clarified that he meant that the job of a police officer cannot be taught.

At the time of the incident, Officer A had not received CIT training and was not certified to carry a Taser. Although he had attended Taser training while in the Academy, his certification had lapsed and he was required to recertify in order to carry a Taser. Officer A explained that it was the duty of the officer to recertify his or her Taser certification, and as of December 26, 2015, he had not yet taken the appropriate steps to recertify. Officer A was not equipped with a Taser, baton, or OC spray on December 26, 2015. (Atts. 486, 487)

In a **statement to IPRA on December 1, 2017, Officer A #XXXXXX** stated that due to his personal schedule, he allowed his taser recertification to lapse. Officer A added that he was

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<sup>10</sup> Officer A was in the Marine Corps from 2007-2012 where he learned “basic life savers,” which he described as learning to make a tourniquet and how to “stuff gauze in something.” Officer A also attended Law Enforcement Medical Response Training, which he also recalls being primarily related to learning to make a tourniquet. Officer A reiterated that he did not provide medical assistance to Subject 1 or Subject 2 aside from calling for an ambulance because he was not an EMT or a medic and was not equipped with gloves or gauze.

<sup>11</sup> In a statement to IPRA on May 12, 2016, Officer G, #XXXXX, related that he was one of the first officers on the scene after the radio call went out. He observed Officer A on the sidewalk “distracted and cursing,” saying “I fucked up, I fucked up. Fuck, fuck.” Officer G told Officer A to calm down and breathe, instructing him to “get his head straight” and to “relax, think about what happened and get his story straight.” Officer G explained that he knew Officer A was stressed and was going to need to speak with many people following the incident, so his advice was to ensure that Officer A would be “able to clarify verbally” what had occurred. Officer A did not tell Officer G any details about the incident, and Officer G did not confirm that Officer A was the shooting officer until the following day. (See Att. 297)

<sup>12</sup> See attachment 476, pp. 55-65.

<sup>13</sup> Att. 476, page 62.



working midnights at the time that he was due to recertify and he was unsure if there were specific hours for the training or if he had to certify on his own time. (Att. 526)

## **MEDICAL EXAMINER'S OFFICE STATEMENTS**

In a **statement made to IPRA** on October 17, 2017, **Illinois State Police ("ISP") Sergeant 1** explained what information can be gained from a Leica Scan. Leica provides a 3D laser scan of a crime scene. It is used to identify a bullet's trajectory. The Leica Scan performed by ISP suggests that Officer A fired at least one of his shots at the bottom of the stairs of Subject 2's house. ISP measured the trajectory of one bullet of the seven shots. This trajectory line had a very slight upward angle. The height from the trajectory line to the top of the stairs measured approximately 2.502 feet, with a five-degree variance, and the height from the trajectory line to the walkway at the bottom of the stairs measured approximately 5.008 feet, with a five-degree variance.

Based on these measurements, it is more probable than not that Officer A fired the bullet that created this trajectory line while he was on the ground and not on the stairwell, because if he had fired from on the stairs, it would require him to be quite low to the ground. However, the Leica Scan does not definitively rule out Officer A having fired shots from the stairs. (Atts. 518, 519)

In a **statement made to IPRA** on August 29, 2017, **Assistant Medical Examiner ("ME") Doctor 1** stated that she performed the autopsies for both Subject 2 and Subject 1. Doctor 1 indicated that Subject 2 suffered six gunshot wounds to his body. The shot numbered "1" was located on the lateral left side of the chest. The shot numbered "2" was located on the lower left side of his back. The shot numbered "3" was located on his right buttock, and the shot numbered "4" was located on the posterior medial left arm. The shot numbered "5" was a graze wound on the lateral left side of his chest and the shot numbered "6" was a graze wound on the posterior right shoulder.

Two of the wounds were exit wounds which Doctor 1 used to help determine the path of the bullets. The trajectory of five of six of Subject 2's bullet wounds was slightly upward. Doctor 1 could not determine the trajectory of one of Subject 2's wounds, which was a graze wound. Doctor 1 used a bullet probe as well as a ruler to determine the bullet's trajectory. Stippling, which is characterized by red and purple lesions around the skin, is present when a person is shot at close range, usually within two-feet. Stippling was not present in any of Subject 2's bullet wounds, which leads us to believe that it is more likely than not that he was not shot within close range.

Subject 1 suffered one bullet wound to the chest, without an exit point. It is unclear whether the bullet that punctured Subject 1 went through Subject 2. (Atts. 514, 515)

In a **statement made to IPRA** on August 29, 2017, **Supervising ME Investigator 1** explained that the ME's Office characterizes a "mandatory scene" as one in which a set of circumstances exists, which would require the ME's office to report to the scene of a homicide. A "police involved shooting" is regarded as a mandatory scene. However, the ME's Office did not respond to this incident because they did not receive notification by the CPD that this was an officer involved shooting.

## **ILLINOIS STATE POLICE (ISP) FORENSIC LABORATORY REPORTS**

**Illinois State Police (ISP) Forensic Science Laboratory Reports** document the examination of recovered firearms evidence in this incident, to include the examination of Officer A's weapon, which was found to be operable as received. An analysis of the reports shows the following facts that are relevant to this investigation:

Seven (7) 9mm cartridge casings were collected and submitted for examination; the ensuing examination shows that all of the recovered casings were fired from Officer A's Smith & Wesson M&P 9mm semiautomatic pistol. Specifically:

- Two (2) 9mm cartridge casings recovered from the parkway in front of XXXX W. Erie were identified as having been fired from Officer A's weapon.
- One (1) 9mm cartridge casing recovered from the front yard of XXXX W. Erie was identified as having been fired from Officer A's weapon.
- One (1) 9mm cartridge casing recovered from the sidewalk, just east of XXXX W. Erie, was identified as having been fired from Officer A's weapon.
- One (1) 9mm cartridge casings recovered from the sidewalk on the south side of Erie Street was identified as having been fired from Officer A's weapon.
- Two (2) 9mm cartridge casings recovered from the sidewalk in front of XXXX W. Erie were identified as having been fired from Officer A's weapon.

Seven (7) fired bullets were collected and submitted for examination; the ensuing examination shows that all the recovered bullets were fired from Officer A's Smith & Wesson M&P 9mm semiautomatic pistol. Specifically:

- Three (3) fired bullets recovered from Subject 2's body were identified as having been fired from Officer A's weapon.
- One (1) fired bullet recovered from the front door of XXXX W. Erie was identified as having been fired from Officer A's weapon.
- One (1) fired bullet recovered from the glass block in the bathroom of XXXX W. Erie was identified as having been fired from Officer A's weapon.
- One (1) fired bullet recovered from Subject 1's body was identified as having been fired from Officer A's weapon.
- One (1) fired bullet recovered by security personnel at Stroger Hospital, on the gurney, was identified as having been fired from Officer A's weapon.

Additionally, the reports indicate that the baseball bat recovered from the foyer of XXXX W. Erie was swabbed for the presence of blood. The swabs from the bat were submitted for comparison to the buccal swab collected from Subject 2. As of the time of this report, the results of that analysis were still pending.<sup>14</sup> (Atts. 17, 438)

## MEDICAL RECORDS

**Medical Records for Subject 2 from Stroger Hospital** indicate that Subject 2 arrived pulseless on December 26, 2015 at 5:24 a.m. He presented multiple gunshot wounds and traumatic arrest. He had two (2) wounds left of his chest, one (1) wound on his upper/medial humerus, one (1) wound on his mid back, one (1) wound on his right medial glute, and one (1) large graze wound over the right lateral scapula. Subject 2 was intubated prior to his arrival, and there was an immediate initiation of CPR performed upon his arrival. He was pronounced dead at 5:24 a.m. (Att. 135)

**Medical Records for Subject 1 from Loretto Hospital** indicate that Subject 1 arrived at the hospital on December 26, 2015, at 5:24 a.m. She presented with one (1) gunshot wound to the midsternal area. She was pronounced dead at arrival, and her time of death is listed as 5:05 a.m. (Att. 153)

## MEDICAL EXAMINER REPORTS

The **Report of Postmortem Examination for Subject 2** indicates that the autopsy of Subject 2 was performed in the morgue of the Cook County Medical Examiner's Office on December 26, 2015, beginning at 0750. The autopsy determined that Subject 2 had sustained the following:

- A gunshot wound on the left lateral side of the chest that perforated the heart and right lung. A copper jacketed projectile was recovered from the posterior right shoulder. The direction of the wound track was left to right, upward, and slightly front to back. There was no soot or stippling on the skin.
- A gunshot wound on the lower left side of the back that perforated the lumbar spine and spinal cord, causing a subdural hemorrhage of the spinal cord. A copper jacketed projectile was recovered from the 2<sup>nd</sup> lumbar spine. The direction of the wound track was back to front, upward, and left to right. There was no soot or stippling on the skin.
- A gunshot wound on the right buttock that perforated the skin and the musculature of the right buttock and hip. A copper jacketed projectile was recovered from the right side of the hip. The direction of the wound track was back to front, upward, and left to right. There was no soot or stippling of the skin.
- A gunshot wound on the left arm that perforated the skin, the tissue, and the musculature of the left arm. There were no projectile or projectile fragments

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<sup>14</sup> An order was previously filed in the Circuit Court of Cook County, No. 2015LXXXXXX consolidated into 2016LXXXXXX, prohibiting Illinois State Police proposed testing of the bat and bullet from proceeding until further order of the court. (Att. 468)

recovered. The direction of the wound track was back to front, upward, and left to right. There was no soot or stippling on the skin.

- A graze wound on the lateral left side of the chest.
- A graze wound on the posterior right shoulder.
- Superficial blunt force injuries on the left upper extremity and the face.

Defects on Subject 2's clothing correspond to the gunshot wounds described above. The pathologist determined that the cause of death was Multiple Gunshot Wounds, and the manner was Homicide.

A toxicology report found that Subject 2 tested positive for Delta-9 Carboxy THC and Delta-9 THC, the active ingredient of marijuana. Subject 2's results were negative for all other substances tested, including opiates. (Atts. 80, 221, 256)

The **Report of Postmortem Examination for Subject 1** indicates that the autopsy of Subject 1 was performed in the morgue of the Cook County Medical Examiner's Office on December 26, 2015, beginning at 1040. The autopsy determined that Subject 1 had sustained the following:

- A single gunshot wound to the chest, which perforated the heart, aorta, and esophagus. A copper jacketed projectile was recovered from the left side of the back. The direction of the wound track was front to back, slightly downward, and right to left. There was no soot or stippling on the skin.

Subject 1's clothing had no gunshot perforations. The pathologist determined that the cause of death was Gunshot Wound of Chest, and the manner was Homicide.

Subject 1's toxicology report was negative for all substances tested. (Atts. 81, 222)

## COURT DOCUMENTS

The **Complaint at Law in the Circuit Court of Cook County**, filed by Civilian 3, acting individually and as the independent administrator for the estate of Subject 2, alleges that the City of Chicago, through the actions of its employees, discharged a weapon which resulted in the shooting and death of Subject 2, used excessive and inappropriate deadly force without justification, and failed to provide medical care to Subject 2 after causing his injuries. (Att. 84)

The **Complaint at Law in the Circuit Court of Cook County**, filed by Civilian 13, acting individually and as special administrator for the estate of Subject 1, alleges that the City of Chicago, through the actions of Chicago Police Department officers, handled and discharged a weapon which resulted in the death of Subject 1, used excessive force without legal or lawful justification, and failed to provide medical care or assistance to Subject 1 after causing her injuries. (Att. 85)

Officer A also filed a **Counterclaim in the Circuit Court of Cook County** against Civilian 3, as Special Administrator of the Estate of Subject 2, and a **Cross-Claim** against the City

of Chicago. (Atts. 528, 529). At the time of this summary report, the civil proceedings were still ongoing.

## DEPOSITIONS

In an **April and May 2017 deposition**, **Officer A** provided the following relevant testimony.

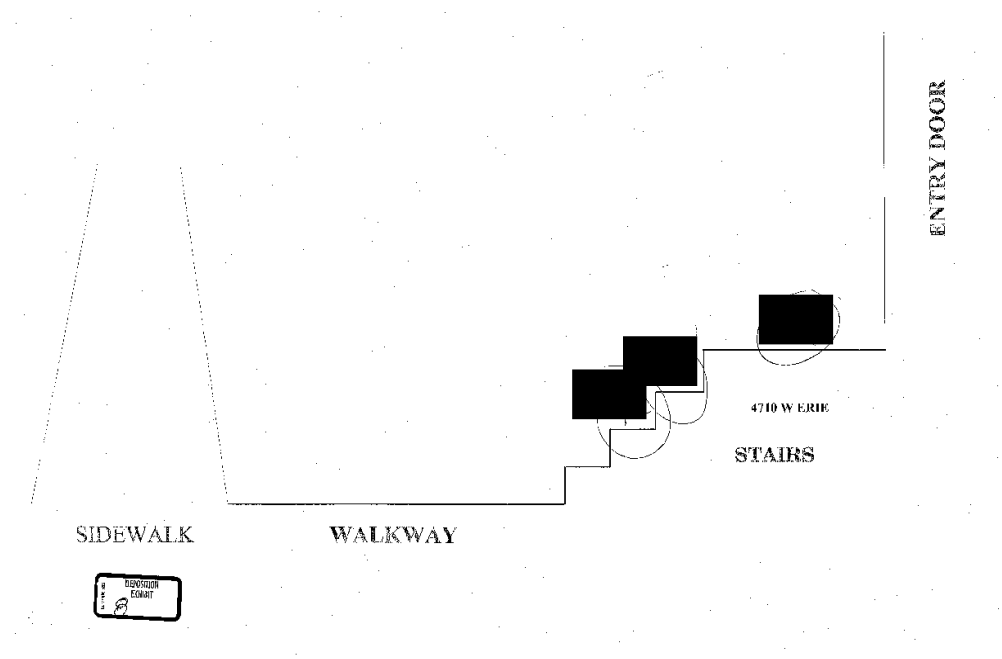
Officer A stated that when he was arriving to Subject 2's home, he understood that he and Officer B were responding to a domestic disturbance. He also believed that OEMC had indicated that "this individual might be armed with a bat." When asked what individual Officer A meant by "this individual," he said "[w]hatever individual we were expected to see. I wasn't sure."

Officer A stated that when he knocked on the door, Subject 1 opened and said "it's upstairs." Officer A heard someone approaching from the top of the stairs "in a loud pounding fashion" so he started to back pedal. He did not see where Subject 1 went as he began to back pedal away from the doorway. He may have told Subject 1 to go back into her apartment, but he did not know if he did. He agreed that the last place he saw Subject 1 was in the vestibule and that he never saw her relocate out of the vestibule into her apartment.

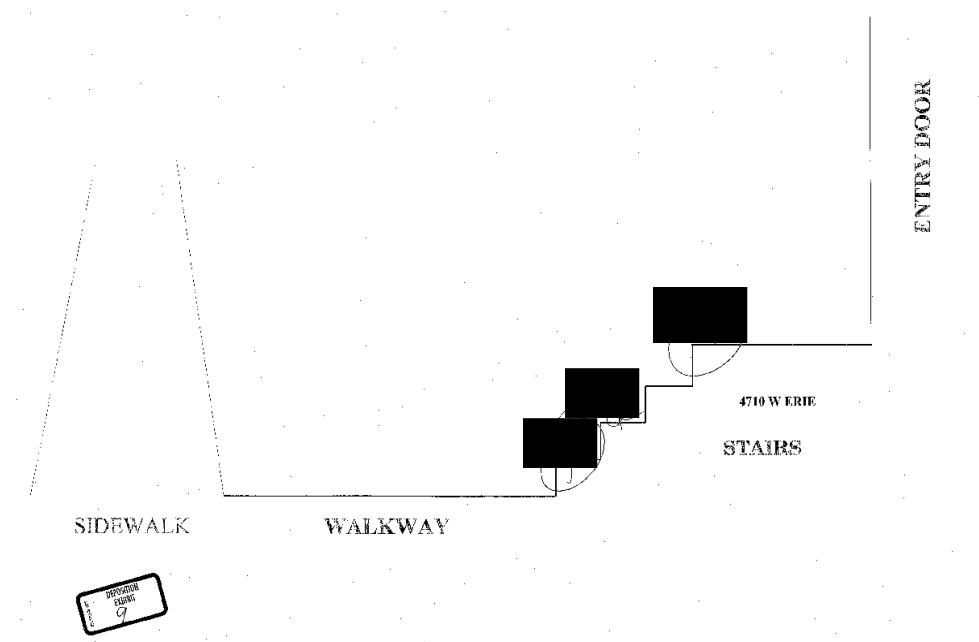
Officer A stated that when he first saw Subject 2, Subject 2 was in the vestibule and was holding the bat above his shoulder or head with both hands, in "the motion of ready to swing." At this point, Officer A was "[o]n the porch, on the top step of the porch, probably." Officer A stepped back to create distance, causing him to backpedal down the stairs. Subject 2 did not say anything to Officer A. Officer A said to Subject 2, "Drop that bat."

When Subject 2 reached the top step and Officer A was "[p]robably on the second step" of the stairs, Subject 2 swung the bat toward Officer A from overhead in a downward fashion. Subject 2 then swung the bat again and brought it back up to cock it. At this point, Subject 2 was still close enough to hit Officer A with the bat. After Subject 2 cocked the bat back, Officer A drew his weapon and said "Drop that bat."

On the following diagram (Exhibit 8), Officer A marked his and Subject 2's positions when Subject 2 swung the bat. He used an "X" to signify his position and a "X" to signify Subject 2's.

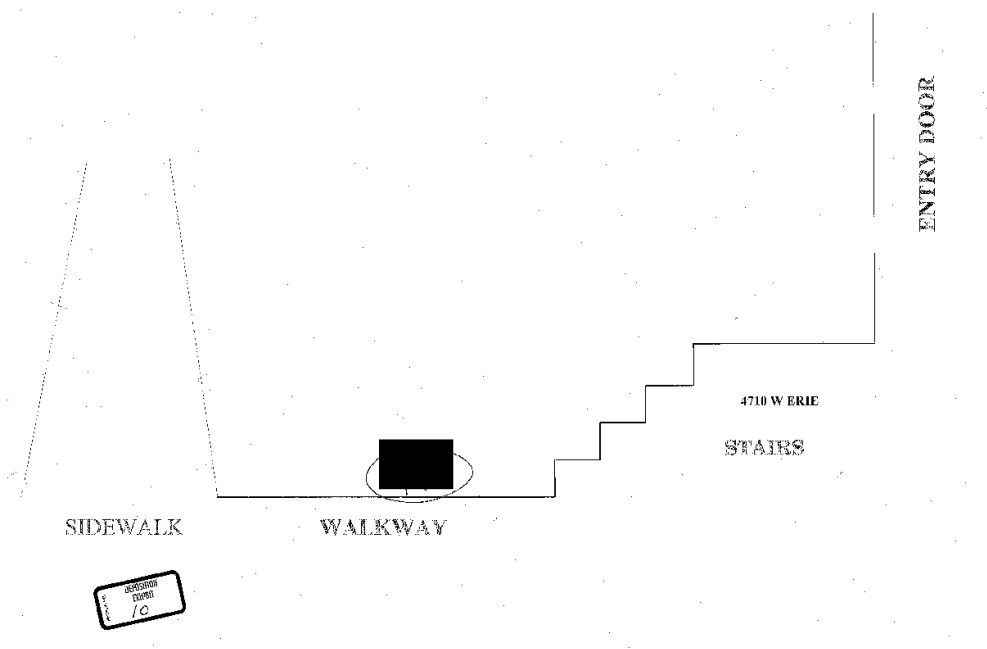


Officer A marked on the next diagram (Exhibit 9) his and Subject 2's positions when Officer A fired his first shot. He described Subject 2 as being on the "top of the step" and said he was on the steps when he started shooting. Officer A said he was back pedaling down the stairs in a matter of seconds, so it was difficult for him to know exactly where his feet were when he fired the first shot. Officer A later said that when Subject 2 had the bat raised up over his right shoulder the second time, Officer A was on the bottom steps, retreating toward the sidewalk. He continued to state that he started firing while on the stairs.



Officer A said that as he started firing, Subject 2 was not moving. Officer A was then asked whether he told IPRA that Subject 2 was moving, and he said that he did and that he believed his statement to IPRA was accurate.

Finally, Officer A marked on the following diagram (Exhibit 10) his position when he fired his last shot. He could not tell where Subject 2 was when he fired his last shot. He then agreed that Subject 2 was not on the porch and that he was “in the vestibule area.” Officer A said that Subject 2 was holding the bat with both of his hands the entire time and never stopped threatening Officer A while Officer A was firing.



Officer A said he fired his gun six to seven times in less than a second. When Officer A was firing at Subject 2, Subject 2 was moving and turning. Officer A stated that at some point while he was shooting, Subject 2 said, “Fuck.” This was the only thing that Officer A heard Subject 2 say. Subject 2 was grabbing his chest at this point with his left hand, while holding the bat with his right hand to his side. Officer A first stated he did not know when Subject 2 dropped the bat. Officer A then said Subject 2 dropped the bat before Officer A stopped firing. Officer A was then asked, “So after he dropped the bat, you continued firing?” to which he responded, “This was in a half a second.” He then stated Subject 2 dropped the bat at the exact same time that Officer A stopped firing. When Subject 2 dropped the bat, he was turned to his right, such that his left side and part of his back were facing Officer A. Officer A knew Subject 2 was no longer a threat when he was on the ground and the bat was out of his hands.

Officer A stated that when he fired his last shot, Subject 2 was upright. Officer A realized Subject 2 was struck with a bullet when Subject 2 “screamed and grabbed for his chest.” Officer A said he had fired approximately six shots at that point. After Subject 2 grabbed his chest, he fell to the floor on his front. The baseball bat “wound up on the wall in the vestibule, along the wall.”

Officer A later said in his deposition that he stopped firing when Subject 2 “was on the ground” and the bat was no longer in his hand.

Officer A was at the bottom of the steps when he finished shooting, almost right on top of the steps. After he finished shooting, he approached the building and observed Subject 2 and Subject 1 inside the vestibule. No portion of Subject 2’s body was on the porch.

Using a toy weapon, Officer A demonstrated the highest possible place his weapon could have been when he fired the first and last rounds. When he held the toy weapon in the highest position, the distance from the floor to the bottom of the slide of the weapon measured 61  $\frac{3}{4}$  inches, and the distance from the floor to the top of the weapon measured 62  $\frac{3}{4}$  to 63 inches. Officer A also held the toy weapon at the position he was holding it when he fired his first round, near his holster. When the toy gun was in this position, the distance from the floor to the bottom of the barrel measured 49  $\frac{3}{4}$  inches and the distance from the floor to the top of the weapon measured 50 and  $\frac{1}{2}$  to 50 and  $\frac{3}{4}$  inches. Officer A agreed that during each round, his weapon would have been positioned between these highest and lowest points. Later in the deposition, Officer A was again asked to demonstrate, using a toy gun, how he was holding his weapon when he fired from the lowest point. During the second demonstration, the lowest level from Officer A’s hand to the ground measured 44  $\frac{1}{2}$  inches, and the highest level of the gun to the ground measured 49  $\frac{1}{2}$  inches.

Following the shooting, Officer A saw Civilian 3 halfway down the stairs with his hands in front of him. Officer A asked Civilian 3, “Dad, what the fuck?” Officer A explained that, in his opinion, Civilian 3 should have been controlling what Subject 2 was doing in his apartment before calling the police. In response, Civilian 3 said, “You did what you had to do” multiple times. When Civilian 3 saw Subject 1, he became more frantic, instructing Officer A to call an ambulance.

Additional officers arrived on the scene. Officer A completed two walk-throughs on the scene, one with Street Deputy Detective B and one with Detective A. Officer A believed that he spoke on-scene to Detective B first, then to Lieutenant B, then to Detective A. Officer A said that, to his knowledge, he told Detective A the same thing both times he spoke to Detective A. He said he told Detective A both times that Subject 2 had a baseball bat over his head and he swung it at Officer A. Officer A stated that Detective A interviewed Officer A a second time at Area North on December 28, 2015, two days after the incident. Officer A did not know what additional information Detective A was seeking when he interviewed Officer A the second time. According to Officer A, the interview on December 28 was planned with Detective A on December 26. Officers A and B had lunch sometime between the first and second interviews, and they rode together to Area North for the second interview.

Officer A stated that on the date of the incident, he was not carrying a Taser. Officer A said his Taser qualification had expired, and he had not had a chance to complete the annual Taser requalification requirement.

In his **April 2017 deposition**, **Officer B** testified that in the millisecond in which he first saw Subject 2, he saw Subject 2’s arm holding a bat. He did not see the rest of Subject 2’s body. Subject 2 was still in the interior of the building, coming out from behind the door. He next recalled seeing Subject 2 holding the bat with two hands up over his right shoulder. Subject 2’s hands were by his chest and shoulder, but not above his shoulder. This was the last time Officer B saw Subject



2 before shots were fired. Initially, Officer B said he did not remember Subject 2's exact location and did not know whether Subject 2 had made it out to the porch when Officer B saw him. However, Officer B then stated that the last time he saw Subject 2, Subject 2 was still in the vestibule and charging toward the officers.

After seeing Subject 2 with the bat, Officer B looked down to create distance. He was able to back down the stairway, while looking down, to the base of the stairs. The next time that Officer B saw Subject 2, Subject 2 was clutching himself, with the front of his body facing Officer B, and saying, "Oh, fuck. Oh, fuck." The entire time in between seeing Subject 2 with the bat and hearing Subject 2 call out, Officer B was looking down. He heard what he thought was a bat fall onto concrete, but he did not see the bat fall. He believed the bat fell on the porch. Officer B agreed that he never actually saw Officer A firing his weapon because Officer B was looking down during that timeframe.

Officer B stated that Subject 2 turned to the right as he fell. At this point, Officer B was standing at the base of the stairs, to the left, and Officer A was standing to the right of Officer B at the base of the stairs. Officer B did not remember if he heard any gunshots after he heard Subject 2 say "Oh, fuck." From Officer B's view, Subject 2 fell on the porch after being shot and did not move. He did not observe Subject 2 step from the location where he had been shot. When Subject 2 fell, it appeared that the lower half of his body was on the landing of the porch and the other half of his body was in the vestibule. Following the shooting, Officer A said, "what the fuck dad," and Civilian 3 yelled out "you did what you had to do" three or four times.

Officer B stated that at no time did he observe Subject 2 swing a bat, nor did he observe Subject 2 descend the stairway at XXXX West Erie. He did not know the distance between Officer A and Subject 2 when Officer A first fired at Subject 2, nor did he know how close Subject 2 ever got to Officer A. Officer B never heard Officer A say "drop the bat." Officer B said that it was "very possible" that Officer A did say "drop the bat" but that Officer B did not remember it. He speculated that his auditory functions could have shut down because he did not remember hearing the initial gunshots, either.

The last time that Officer B saw Subject 1, she was turning back into her apartment. He did not see if Subject 1 entered her apartment.

Officer B believed that Detective A first interviewed him at Area North. Officer B said that after the first interview, he believed Detective A visited his home "just to follow up." Officer B had lunch with Officer A after the incident because they "were buddies" who played on the same hockey team and because they would contact each other after the incident and have lunches to catch up and check in on each other's wellbeing. Officer B stated that he incorrectly checked the box on his TRR indicating that verbal commands were given, since Officer B did not give Subject 2 any verbal directions. He also did not remember hearing Officer A say anything.

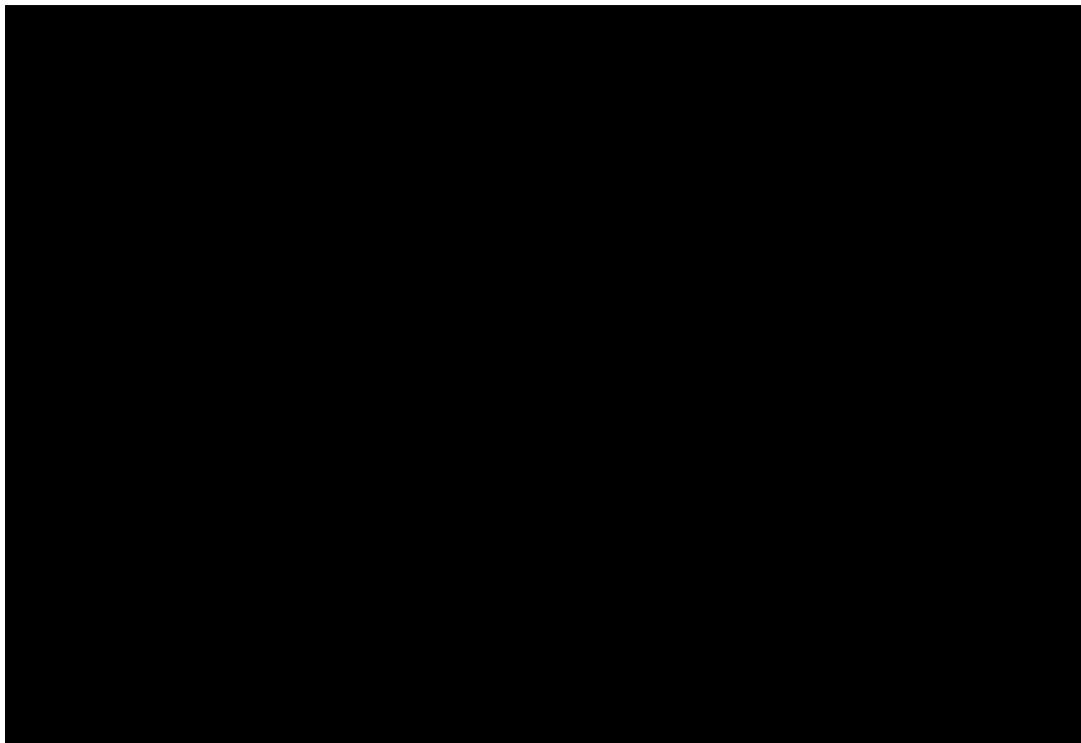
In an **April 2017 deposition**, **Civilian 10** stated that one of his cousins dropped him off at his grandmother's home at XXXX West Ohio Street at approximately 10 or 11 p.m. on December 25, 2015. His friend Civilian 11 arrived at about the same time, and Civilian 10 got into Civilian

11's car. Civilian 10 could not remember Civilian 11's last name. At the time of the deposition, Civilian 11 had been deceased for six months.

After Civilian 10 got into Civilian 11's car, Civilian 11 picked up "a little pint" of something and Civilian 10 and Civilian 11 rode around the area, ultimately ending up on Lakeshore Drive and riding through downtown. Civilian 10 and Civilian 11 also stopped at a club called Brown Sugar and a couple of bars, although Civilian 10 did not actually enter the bars. In addition, they stopped "at gas stations and stuff like that to get cigarettes."

Civilian 10 and Civilian 11 returned to Kilpatrick and Erie at approximately 4 a.m. Civilian 11 stopped the car on the southeast corner, with most of the car on Kilpatrick. Civilian 11 and Civilian 10 debated whether they wanted to go to breakfast. Civilian 10 said he was sober at the time. He had only had a few sips of drinks at approximately 3 p.m. on December 25. He had also smoked one marijuana joint in Civilian 11's car at approximately 10 p.m. on December 25.

At some point while sitting on the corner, Civilian 10 observed a police wagon driving the wrong way on Erie. Afterward, Civilian 10 stopped paying attention and looked back to his phone. Within a minute, he heard a gunshot. He ducked at first, but after realizing the shot was "not coming for [him]," Civilian 10 looked to see from where the shot originated. He heard more shots and turned to his left and saw an officer firing multiple shots. The officer was standing still and upright, holding his gun with his right hand extended in front of him and his left hand underneath his right hand. Nothing was obstructing Civilian 10's view of the officer. The officer was standing on the sidewalk, a little to the left of the walkway if one were facing the home at XXXX Erie. Civilian 10 did not see anybody else within 20 feet of the officer when he was shooting. He agreed that the officer was standing in the area circled on the following photograph (Civilian 10 Exhibit No. 2):



After the officer stopped shooting, Civilian 10 observed him make a motion as if he was talking on the radio. Civilian 10 exited the car and crossed the street to stand on the southwest corner of Kilpatrick. When Civilian 10 realized a police officer had shot somebody, he knew the situation was going to turn into a crime scene, for which he did not have time. He left and went to his grandmother's house, walking south on Kilpatrick, then through an alley that ran parallel to Ohio and Erie, and then through a park.

About an hour later, Civilian 10's girlfriend, Civilian 12, picked him up and the two rode by the scene on the way to Civilian 12's house. Civilian 10 observed "a bunch of news trucks" on Erie. Civilian 10 took a video, which he put on his Facebook account. The video showed an ABC news van, and Civilian 10 could be heard on the video saying "this shit here is all bogus." Civilian 10 said he was expressing anger that the CPD "killed the boy for absolutely no reason." Civilian 10 did not personally know Subject 2's family, though he knew the family lived there. He also did not personally know anybody in Subject 1's family.<sup>15</sup>

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Supervising Investigator A

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<sup>15</sup> In his deposition, Civilian 10 provided a brief description of his employment history. He stated that he had been working in car sales. When asked what other kinds of jobs he had, Civilian 10 said what was transcribed as "I worked at Home Depot in the receiving for six years before that." IPRA sent a subpoena to Home Depot, which revealed that Civilian 10 was originally hired by Home Depot in April 2009 and was terminated in September 2011. (Att. 502).

## IV. ANALYSIS

### ALLEGATIONS 1 and 5

We first address Allegations 1 and 5, that Officer A shot Subject 2 and Subject 1 without justification.

### Legal Standard

The applicable Chicago Police Department order is General Order 03-02-03, II, which states as follows:

“A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.”

In addition, the use of deadly force is codified under section 7-5 of the Criminal Code of 2012 (720 ILCS 5/7-5 (West 2014)). The pertinent part of that statute states that:

“[a] peace officer ... need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...” 720 ILCS 5/7-5 (West 2014).

Finally, an officer’s use of deadly force is a seizure within the meaning of the Fourth Amendment and, therefore, must be reasonable. *Muhammed v. City of Chicago*, 316 F.3d 680, 683 (7th Cir. 2002). “The ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989); *see also Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The reasonableness calculation “must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham*, at 396–97. Consequently, “ ‘when an officer believes that a suspect’s actions

[place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.’ ” *Muhammed*, 316 F.3d at 683 (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir.1988) (en banc) and omitting emphasis).

### **Analysis**

At the outset, there is no evidence to support that Officer A’s shots would have been justified under the second prong of General Order 03-02-03, II, which authorizes the use of deadly force in certain instances to prevent an arrest from being defeated by resistance or escape. Officers A and B were responding to a domestic disturbance, not attempting to arrest Subject 2. Accordingly, Officer A’s use of deadly force would not fall within the second prong of General Order 03-02-03, II.

Accordingly, our only consideration is whether Officer A’s shots were justified under the first prong of General Order 03-02-03, II. As previously detailed, the relevant question is whether a reasonable officer in Officer A’s position would have believed the use of deadly force was necessary to prevent death or great bodily harm. We apply the same analysis to all of Officer A’s shots, including the one that inadvertently struck Subject 1, because Officer A’s use of deadly force was premised solely on Subject 2’s actions, not on any independent actions of Subject 1. Thus, our inquiry is whether Officer A’s shots were justified based on Subject 2’s actions. If the firing of shots at Subject 2 were not justified, then the firing of shots at Subject 1 could not be.<sup>16</sup>

To determine whether a reasonable officer in Officer A’s position would have believed the use of deadly force was necessary, we must first determine the “position” Officer A was in when he used deadly force. This requires that we make factual determinations as to what Subject 2 was doing, and the distance between Subject 2 and Officer A, in the moments before Officer A fired each of his shots. We make our factual and legal determinations using a preponderance of the evidence standard. A proposition is proved by a preponderance of the evidence when it is found to be more probably true than not. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005).

#### **I. Factual Determinations**

Based upon our investigation, including the physical evidence and witness statements, we have determined the following facts: (1) Subject 2 did not swing the bat, (2) Subject 2 never progressed further than the immediate area outside the threshold, and (3) Officer A fired all of his shots when he was standing in the area between the bottom of the steps and the curb.

##### **A. Subject 2 Did Not Swing The Bat He Was Holding**

First, the evidence establishes that Subject 2 did not swing the bat that he was holding.

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<sup>16</sup> Under the doctrine of transferred intent, if Officer A acted in self-defense in shooting at Subject 2, then he also acted in self-defense in killing Subject 1, such that he would not be criminally liable. See *People v. O’Neal*, 2016 IL App (1st) 132284, ¶ 60.

There are no other witness accounts or physical evidence that corroborate Officer A's statements that Subject 2 swung the bat. Officer A's statements in his deposition and during his interviews with Detective A and IPRA constitute the sole evidence that Subject 2 swung the bat. However, Officer A's statements and testimony in this regard are inconsistent and, ultimately, unreliable.

First, Officer A failed to mention Subject 2's swinging of the bat to Detective A when he made his first statement to Detective A. Officer A claimed in his IPRA statement that he did discuss the bat swing when he first spoke to Detective A.<sup>17</sup> However, Detective A did not note in either his original report or his general progress report that Officer A said Subject 2 swung the bat in his first interview.<sup>18</sup> Most notably, when IPRA asked Detective A about this particular issue, he specifically confirmed that Officer A did not mention the bat swing in his first interview.<sup>19</sup> Detective A also remembered that, during his second interview with Officer A two days later, Officer A told Detective A "there were some changes" to make to his original statement, one of which was to add the detail of Subject 2 swinging the bat.<sup>20</sup> Considering that Detective A did not detail in either his report or general progress notes that Officer A initially mentioned a bat swing and independently remembered that Officer A did not mention the bat swing in the first interview and that Officer A stated he had changes to make to his original statement, we find that Officer A did not initially tell Detective A that Subject 2 swung the bat.

Officer A first mentioned the bat swing to Detective A in his second statement to Detective A, two days later.<sup>21</sup> He also included that Subject 2 swung a bat in his TRR and OBR, which he signed at Area North after the incident, and he seems to have communicated this information to Detective B on scene because according to an IPRA report, Detective B told IPRA investigators on scene that Subject 2 threatened the officers by swinging at them with a bat.<sup>22</sup> Nonetheless, we find it telling that in his first opportunity to explain the shooting to Detective A, Officer A did not mention such a significant detail.

Notably, Officer B has consistently stated, both in his IPRA statement and deposition, that he did not see Subject 2 swing a bat.<sup>23</sup> Officer B claimed that he was looking down during the timeframe that Officer A claimed Subject 2's bat swing took place.<sup>24</sup> However, if Subject 2 had actually swung the bat twice, as Officer A claimed, it seems likely that even if Officer B were looking down, he still would have seen the bat swinging out of his peripheral vision, particularly because Officer B was still facing in Subject 2's direction when he was looking down. Officer B said in his IPRA statement that lights were on in the front hallway and porch such that the officers

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<sup>17</sup> Attachment 487, pgs. 72-73.

<sup>18</sup> Attachment 77; Attachment 478.

<sup>19</sup> Attachment 412, pgs. 38-39.

<sup>20</sup> Attachment 412, pgs. 37-38.

<sup>21</sup> The details surrounding Officer A's and Officer B's second statements are, in themselves, conflicting. Officer A and Detective A said that Officers A and B went to the station for the second interviews. Officer B, on the other hand, said twice in his deposition that Detective A came to his house.

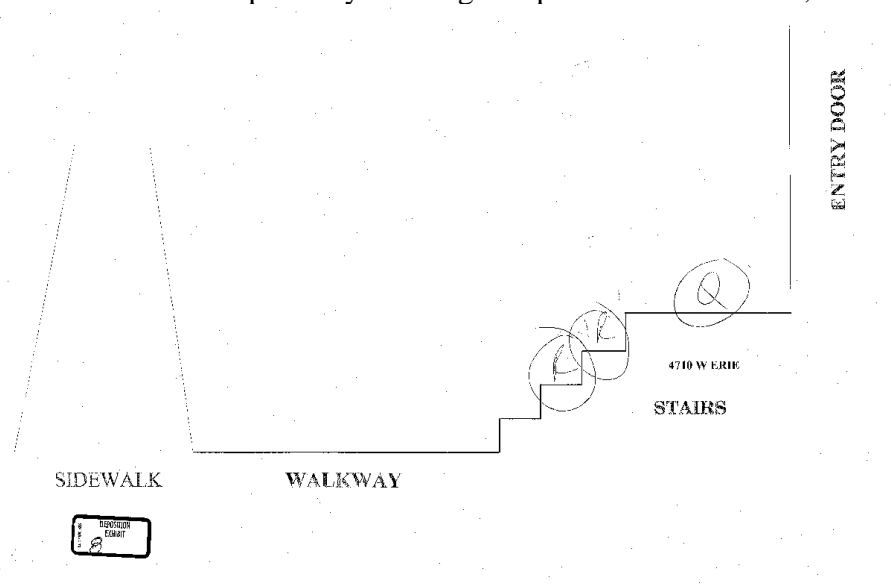
<sup>22</sup> IPRA's initiation report is included as Attachment 4.

<sup>23</sup> Attachment 72, pg. 55; Attachment 493, pg. 10.

<sup>24</sup> Attachment 72, pgs. 14-15, 55.

“could see everything.”<sup>25</sup> Either way, Officer B’s statement offers no corroboration for Officer A’s statement that Subject 2 swung the bat toward him.

Not only did Officer A fail to initially mention the bat swing to Detective A, but in the statements wherein he did discuss the bat swing, he provided inconsistent accounts as to where Subject 2 was standing when he swung the bat. Officer A claimed in both his IPRA statement and deposition that Subject 2 made two swings: one downward, and one back upward.<sup>26</sup> In his IPRA statement, Officer A said that Subject 2’s first swing was “in the threshold” and that Subject 2’s second swing was “prob’ly” while Subject 2 was on the top steps while Officer A was at the bottom of the stairs.<sup>27</sup> By contrast, in his deposition, Officer A said Subject 2 swung the bat for the first time when Subject 2 was on the top step of the porch while Officer A was on the second step.<sup>28</sup> He also said he fired from the second step after Subject 2 cocked the bat back up, which would mean Subject 2 swung the bat upward while Officer A was still on the second step.<sup>29</sup> Later in his deposition, when asked where Subject 2 was standing during the first swing, Officer A indicated Subject 2 was on the middle of the porch by marking that position on Exhibit 8, as shown below.<sup>30</sup>



Thus, Officer A has provided at least three different accounts of where Subject 2 was standing when he first swung the bat: in the threshold, in the middle of the porch, and on the top step. Further, he has provided differing accounts as to where he was standing when Subject 2 swung the bat for the second time in an upward direction, telling IPRA that he was at the bottom of the steps but then testifying in his deposition that he was only on the second step.<sup>31</sup> The inconsistency between Officer A’s IPRA statement and deposition testimony is significant. Even if Officer A could not remember where Subject 2 was standing when he swung the bat the first time, Officer A would be able to remember whether Subject 2 swung the bat the second time while he was one step from Officer A (as Officer A claimed in his deposition) as opposed to when he

<sup>25</sup> Attachment 72, pg. 17.

<sup>26</sup> Attachment 487, pg. 23; Attachment 496, pg. 137.

<sup>27</sup> Attachment 487, pgs. 22, 24.

<sup>28</sup> Attachment 496, pg. 136.

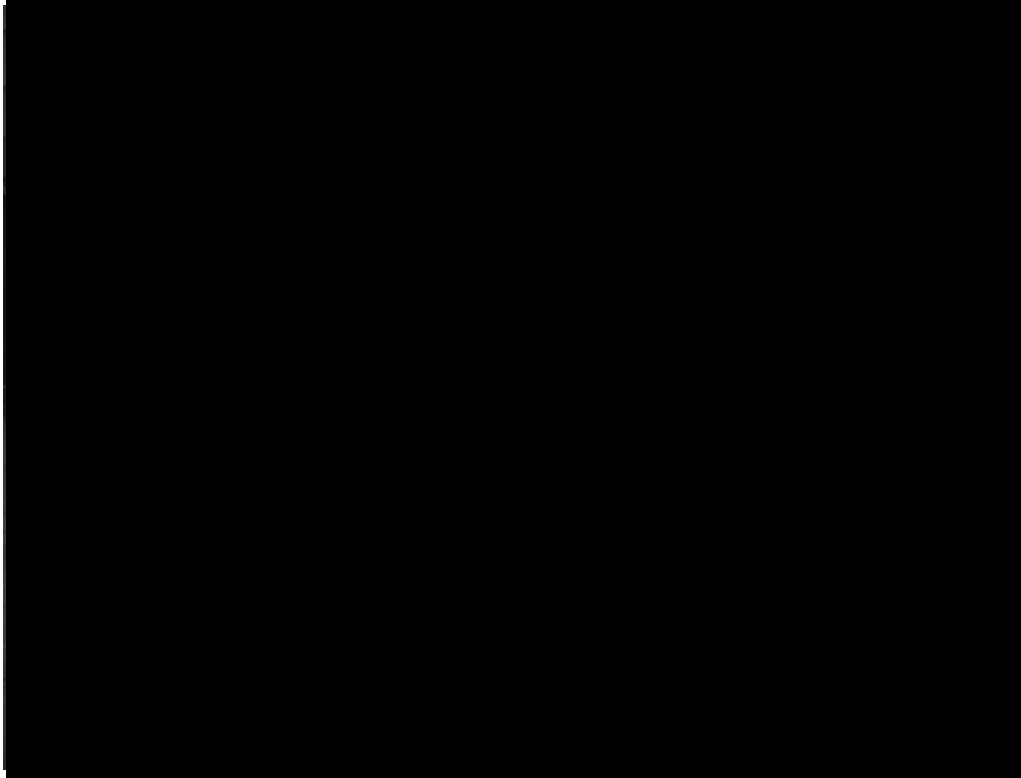
<sup>29</sup> Attachment 496, pg. 139.

<sup>30</sup> Attachment, pgs. 171-172, 174 (deposition testimony); Attachment 498 (exhibits).

<sup>31</sup> The staircase consisted of four steps, with the fourth step being level with the top of the porch.

was several stairs away from Officer A (as Officer A claimed in his IPRA statement).

In addition to the inconsistencies inherent in Officer A's statements, some of his accounts of Subject 2 swinging the bat are also implausible. First, if Subject 2 had swung the bat in the threshold, Subject 2 would have hit the doorframe or Subject 1 given the small size of the vestibule area.<sup>32</sup>



Moreover, if Subject 2 had swung the bat in the threshold area, we question how Officer B would not have seen Subject 2 swing the bat because Officer B said he saw Subject 2 at the threshold.<sup>33</sup> Officer B's undivided attention would have been on Subject 2's actions. We also have to question Officer A's deposition testimony that Subject 2 swung the bat down and back up when Subject 2 was on the top step while Officer A was on the second step. It seems impossible that Subject 2 could swing the bat twice at such a close distance to Officer A, while Officer A was balancing on the stairs, without hitting Officer A or without Officer A tripping down the stairs. If Subject 2 had actually taken this action, it would have been unavoidable to escape Officer B's view.

Ultimately, all of the inconsistencies in Officer A's statements about the details of Subject 2's actions with the bat make Officer A's claim that Subject 2 swung a bat unreliable. Thus, there

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<sup>32</sup> The vestibule area measured approximately 4 feet deep and between approximately 5 and 7 feet wide (Att. 480; Att. 77, pg. 15). The bat measured 28 inches (Att. 17). In his IPRA statement, Officer A said that when Subject 2 opened the door to the vestibule, Subject 2 was two feet from Subject 1 (Att. 487, pg. 44).

<sup>33</sup> The above photograph depicts the vestibule area. As to the area of blood near evidence marker B, Ambulance Commander 1 said that this smudge could have occurred when the paramedics were carrying Subject 2 by his hands and Subject 2's "back side" hit the ground. Ambulance Commander 1 said Subject 2's feet were inside the threshold of the outer doorway, near evidence marker B. (Att. 134, pgs. 4-5, 7-8).



is no credible evidence establishing that Subject 2 ever swung the bat.

**B. The Evidence Shows Subject 2 Never Moved Past the Area Directly Outside The Threshold of the Vestibule**

The evidence indicates that the farthest point Subject 2 may have reached before Officer A began firing was the portion of the porch directly outside of the vestibule threshold. Ample evidence establishes that after being shot, Subject 2 fell in the vestibule, with his feet near the threshold. CFD Ambulance Commander 1 recalled Subject 2's feet being at the threshold of the exterior door, near marker B, and his chest being in the entrance to Subject 1's apartment, near evidence marker C.<sup>34</sup> CFD Paramedic 1 likewise said Subject 2's legs were in the foyer, outside of the entrance to Subject 1's apartment.<sup>35</sup> He identified Subject 2's chest area as being near marker C and his feet as closer to marker E than B.<sup>36</sup> Officer D, Star. # XXXXX, who arrived at the scene less than five minutes after hearing over the air that shots were fired, said Subject 2's legs were in the front foyer area, halfway into Subject 1's apartment.<sup>37</sup> Officer A likewise told IPRA that Subject 2 fell with his torso in the vestibule and his feet in the threshold of the door.<sup>38</sup> In his deposition, Officer A said that no part of Subject 2's body was on the porch after Subject 2 was shot.<sup>39</sup> We note Officer B did tell IPRA that when Subject 2 fell, the portion of his body below his waist was on the porch.<sup>40</sup> However, all of the other witnesses' statements establish that Subject 2 fell in the vestibule, with his feet at or inside the threshold of the vestibule.

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<sup>34</sup> Attachment 134, pgs. 4-5.

<sup>35</sup> Attachment 130, pgs. 21-22, 49.

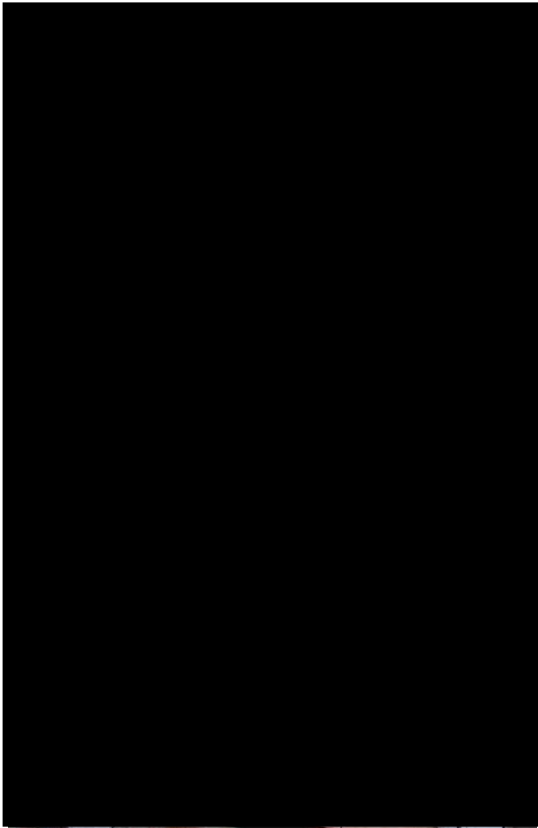
<sup>36</sup> Attachment 130, pgs. 50, 52.

<sup>37</sup> Attachment 248, pgs. 2, 7-8, 14-15.

<sup>38</sup> Attachment 487, pgs. 27-28.

<sup>39</sup> Attachment 496, pg. 152.

<sup>40</sup> Attachment 77, pgs. 38-39.



That Subject 2 fell in the vestibule, with his feet at or inside the threshold of the vestibule, supports a finding that the furthest possible point he reached during the incident was the area of the porch directly in front of the vestibule. If Subject 2 had reached further on the porch, he would have had to have taken several steps backward to ultimately end up in the vestibule. However, Officer A did not detail Subject 2 taking several steps back. Officer A told IPRA that as Officer A was shooting, Subject 2 turned around, stepped backward, and fell in the vestibule.<sup>41</sup> In his deposition, he also agreed that Subject 2 was “moving and turning” while he was shooting; however, he did not describe Subject 2 as retreating all the way backward from the porch into the vestibule. If Subject 2 had been retreating, Officer A should have desisted in firing. Officer B affirmatively said to IPRA that Subject 2 never retreated after shots were fired.<sup>42</sup> Officer B then said Subject 2 may have taken a step backward, but he agreed Subject 2 essentially collapsed where he was shot.<sup>43</sup> In his deposition, Officer B said after Subject 2 was shot, he saw Subject 2 fall from the location where he had been shot and did not see him step from the location where he had been shot.<sup>44</sup>

There is no credible evidence that Subject 2 ever reached the area of the porch beyond the part of the porch directly in front of the vestibule. The sole person to claim Subject 2 reached the front step and to consistently place Subject 2 on the porch is Officer A. However, as we have detailed at length, all of the other inconsistencies in Officer A’s statements make it impossible to

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<sup>41</sup> Attachment 487, pg. 46,

<sup>42</sup> Attachment 72, pg. 51.

<sup>43</sup> Attachment 72, pg. 52.

<sup>44</sup> Attachment 493, pg. 12.

accept his version of events without additional evidence supporting his accounts. In this regard, we note that Officer A has provided inconsistent accounts of what Subject 2 was doing when he fired his last shot. In his statement to Detective A, Officer A said Subject 2 grabbed his chest, stated “oh fuck, fuck, fuck,” turned to the right, and collapsed into the vestibule face down.<sup>45</sup> Officer A said he stopped shooting after Subject 2 collapsed.<sup>46</sup> Officer A offered a similar account in his IPRA statement, adding that Subject 2 turned around and took a step back before dropping into the vestibule.<sup>47</sup> In his IPRA statement, Officer A again said he stopped firing because Subject 2 was down.<sup>48</sup> He also said he realized Subject 2 had been struck by one of his shots when Subject 2 “dropped.”<sup>49</sup> In the first part of his deposition, however, Officer A said that when he fired his last shot, Subject 2 was still upright, and that he realized Subject 2 was struck when Subject 2 screamed and grabbed for his chest.<sup>50</sup> Then, in another part of his deposition, Officer A again said he stopped firing when Subject 2 “was on the ground.”<sup>51</sup> Thus, Officer A has provided different accounts as to when he realized Subject 2 was struck and whether he fired his last shot while Subject 2 was upright or down on the ground of the vestibule. This additional inconsistency further calls into question the reliability of Officer A’s statements.<sup>52</sup>

Officer A’s claim that Subject 2 reached any part of the porch, and particularly the top of the stairs, is not supported by Officer B’s statements. Officer B told IPRA that he saw Officer A shooting when Subject 2 was “on the porch.”<sup>53</sup> In his deposition, however, Officer B said he never actually saw Officer A firing and that he never saw Subject 2 leave the vestibule.<sup>54</sup> Instead, he said that when he last saw Subject 2 before shots were fired, Subject 2 was still in the vestibule, charging toward the officers.<sup>55</sup> Officer B said he then looked down, and the next time he looked up, Subject 2 was clutching himself saying, “Oh, fuck. Oh, fuck.”<sup>56</sup> Accordingly, Officer B has not consistently placed Subject 2 on the porch.

In conclusion, considering all of the above-referenced statements and the physical evidence inside the vestibule, we find the evidence indicates Subject 2 did not advance past the area of the porch directly in front of the vestibule.

### C. Officer A Fired All of His Shots While He Was No Longer Standing on The Stairs

The evidence also shows that it is more likely true than not that Officer A fired all seven of his shots while in the area between the bottom of the stairs and the curb.

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<sup>45</sup> Attachment 77, pg. 17.

<sup>46</sup> Attachment 77, pg. 17.

<sup>47</sup> Attachment 487, pg. 27.

<sup>48</sup> Attachment 487, pg. 30.

<sup>49</sup> Attachment 487, pg. 27.

<sup>50</sup> Attachment 496, pgs. 167-169.

<sup>51</sup> Attachment 497, pg. 21.

<sup>52</sup> Officer A also claimed that he told Subject 2 to “Drop that bat” approximately ten times. However, Officer B never heard Officer A say anything to Subject 2. Civilian 5 also did not hear Officer A say anything. Civilian 3 likewise said he did not hear anyone say anything before the shooting started other than hearing Subject 1 say, “hey, hey, hey.”

<sup>53</sup> Attachment 72, pg. 25.

<sup>54</sup> Attachment 493, pgs. 222-223.

<sup>55</sup> Attachment 492, pg. 222.

<sup>56</sup> Attachment 493, pg. 219.

Officer A provided markedly different accounts as to where he was standing when he fired at Subject 2. In his initial statement to Detective A, Officer A said that he *stopped* firing his weapon when he reached the bottom of the stairs and was standing on the walkway.<sup>57</sup> Similarly, in his deposition, Officer A said he fired his first shot from the second step and that he was standing on the walkway, somewhere between the end of the steps and the sidewalk, when he finished firing his seventh shot.<sup>58</sup> Yet in his IPRA statement, Officer A said he did not *start* firing his weapon until he was off the stairs and onto the walkway.<sup>59</sup> In fact, he specifically said, “I shot from the holster as I was on that walkway from the sidewalk. So in between, so not, not on the steps anymore on that, on that walkway.”<sup>60</sup> Certainly, Officer A’s inability to recall the exact step he was standing on for each shot is understandable considering how rapidly he fired his shots. However, the fact that Officer A provided wholly different accounts as to whether he fired all eight of his shots while standing on the stairs or all seven of his shots after he backed down the stairs significantly undermines his credibility and makes it impossible to determine, from his testimony alone, which version of events is accurate.

Officer B claimed in his IPRA statement that Officer A fired all shots while on the stairs and that when Officer A reached “the grass, there was no more shots fired.”<sup>61</sup> However, inconsistencies between Officer B’s IPRA statement and deposition testimony also make Officer B’s account of Officer A’s firing unreliable. In his IPRA statement, Officer B stated he saw Officer A firing his weapon while Subject 2 was on the porch.<sup>62</sup> Yet, Officer B then stated in his deposition that he was looking down and never saw any shots being fired and that he never saw Subject 2 leave the vestibule.<sup>63</sup> This inconsistency calls into question the accuracy of Officer B’s account of where Officer A was when he fired his weapon.

On the other hand, the statements of Civilian 10 and Civilian 3 corroborate Officer A’s version of events in his IPRA statement that he fired all of his shots from the bottom of the stairs while moving backwards. Civilian 10 said that he initially ducked after hearing a gunshot but then looked back up and saw an officer firing multiple shots.<sup>64</sup> Civilian 10 said this officer was standing on the sidewalk, a little to the left of the walkway.<sup>65</sup> While Civilian 10 did not explicitly identify the officer as Officer A, we can infer that it was Officer A as opposed to Officer B because Officer

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<sup>57</sup> Attachment 77, pg. 17; Attachment 412, pgs. 24-25. In his deposition, Officer A explained that by “walkway,” he meant the concrete area leading from the sidewalk to the porch. Throughout our report, the word “walkway” signifies the concrete path from the sidewalk to the porch, which runs perpendicular to the street, and the word “sidewalk” signifies the concrete sidewalk that runs parallel to the street.

<sup>58</sup> Attachment 496, pg. 139.

<sup>59</sup> Attachment 487, pg. 25.

<sup>60</sup> Attachment 487, pg. 25.

<sup>61</sup> Attachment 72, pg. 27. Officer B did not define which part of the grass to which he was referring, but we presume he meant the grassy area at the front of the sidewalk, near the bottom of the stairs, because in his deposition, Officer B said that when Subject 2 grabbed his chest and fell, Officers B and A were both standing at the bottom of the stairs such that if either officer had taken a step forward, he would have stepped on the stairs (Attachment 493, pg. 36).

<sup>62</sup> Attachment 72, pg. 25.

<sup>63</sup> Attachment 493, pgs. 72, 222-23.

<sup>64</sup> Attachment 494, pg. 27. Civilian 10 was sitting in his friend’s car on the southeast corner of Kilpatrick and Erie when he heard shots being fired and subsequently saw an officer firing multiple shots.

<sup>65</sup> Attachment 494, pg. 32.

B did not fire his weapon. Civilian 10's statement thus supports the fact that Officer A fired at least some of his shots while off the steps, at or around the sidewalk area. Further, although Civilian 10 did not observe all of Officer A's shots, the fact that he observed Officer A at or near the sidewalk supports an inference that Officer A fired his initial shots while at the bottom of the steps. It would have been difficult, if not impossible, for Officer A to back up rapidly enough to fire his initial shots on the stairs but then fire the final shots all the way by the sidewalk. The evidence shows the distance from the bottom of the stairs to the edge of the sidewalk closest to the curb measured at least 10 feet, while the distance from the bottom of the stairs to the curb measured in excess of 20 feet.<sup>66</sup> Further, Officer A said in his deposition that he fired all of his shots in less than a second. Therefore, by Officer A's own account, he both fired his shots and changed his position, if at all, within that instant.

The credibility of Civilian 10's deposition statement is bolstered by the statement of Subject 2's father, Civilian 3. Civilian 3 told IPRA that immediately after hearing Subject 2 run down the stairs, he proceeded down the stairs and heard shots being fired.<sup>67</sup> He paused when he reached the midway point of the staircase and could see an officer's legs and part of his mid-section.<sup>68</sup> The officer was in a "shooting stance" and standing near the walkway in the grass. Civilian 3 further stated that the officer was approximately 30 feet away from Subject 2 at this point. Specifically, Civilian 3 said the officer stated, "I saw the baseball bat, I thought he was gonna lunge at me."<sup>69</sup> In response, Civilian 3 either thought or said "lung[e] at you[?] You 30 feet away from 'em. The bullet, the bullet casings is near the curb once you pass the grass spot. You're lookin' at 20 to 30 feet before you even get to where my son is at in the doorway."<sup>70</sup> Civilian 3 said he saw the shell casings as he exited the building and could see the distance of the casings "which is why [he] could tell [IPRA] exactly where the officer was standing approximately."<sup>71</sup> Per Detective A's report, Civilian 3 told Detective A that he observed an officer crouched down by the curb, approximately 30 feet from the door.<sup>72</sup> We interpret Civilian 3's description to mean that in the moments after the shooting, Civilian 3 saw an officer standing in the grass near the curb, approximately 30 feet away, and that he was able to confirm his approximation of the officer's distance when he later observed the shell casings.

While Civilian 3 did not specifically identify the officer in the shooting stance as Officer A, we can infer that it was Officer A because Officers B and A both told IPRA that, after the shooting, Officer B took cover behind a car in the street.<sup>73</sup> In addition, Officer A told IPRA that he observed Civilian 3 coming partially down the stairs and stopping.<sup>74</sup>

The fact that Civilian 3 saw Officer A approximately 30 feet away after the shooting suggests that Officer A must have fired his shots after descending the stairs because it is impossible

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<sup>66</sup> We have based these measurements off of Attachment 73, which outlines the distances between the various shell casings and the north curb of Erie.

<sup>67</sup> Attachment 44, pgs. 29, 46.

<sup>68</sup> Attachment 44, pgs. 43, 46, 51.

<sup>69</sup> Attachment 44, pg. 29.

<sup>70</sup> Attachment 44, pg. 29.

<sup>71</sup> Attachment 44, pgs. 77-78.

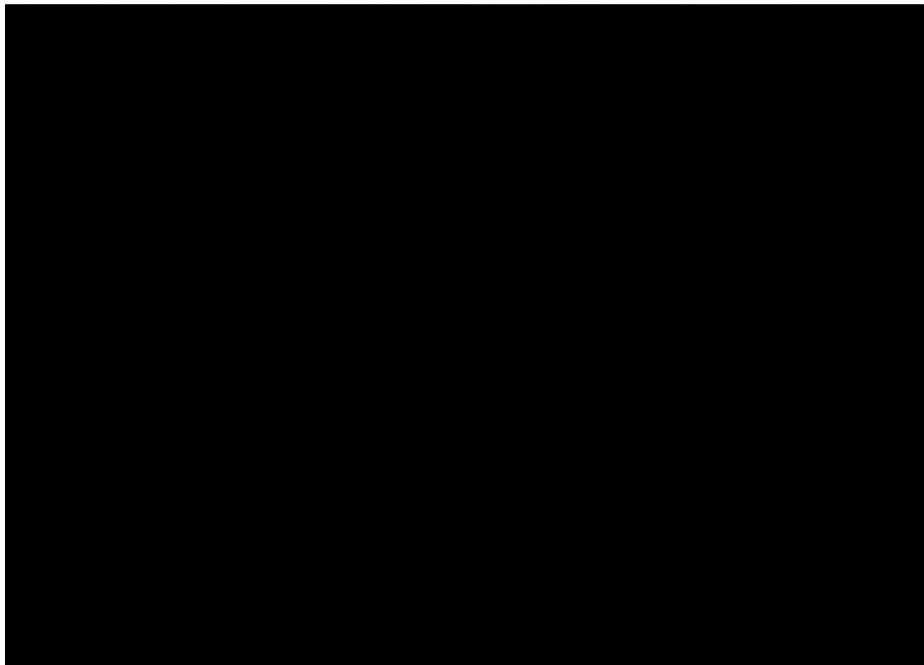
<sup>72</sup> Attachment 77, pg. 19.

<sup>73</sup> Attachment 72, pg. 33; Attachment 487, pg. 30.

<sup>74</sup> Attachment 487, pg. 33.

that Officer A could have started firing on the steps and then walked all the way back to the area near the curb by the time Civilian 3 saw Officer A immediately after the shooting.<sup>75</sup> Thus, Civilian 3's statement, when coupled with Civilian 10's statement, support a finding that Officer A fired all of his shots while off of the stairs.

The position of the shell casings also supports, rather than refutes, a finding that Officer A fired his shots while off the stairs and that he specifically fired in the area between the bottom of the stairs and the sidewalk. As shown in the photograph below (which is part of Attachment 60), three casings were recovered on the sidewalk: one to the left of the stairs, one parallel with the right side of the stairs, and one to the right of the stairs.<sup>76</sup> An additional casing was recovered to the right of the walkway, in the grassy area between the stairs and sidewalk, and two casings were recovered to the right of the walkway, in the grassy area between the sidewalk and the curb.<sup>77</sup>



We acknowledge and have considered the possibility that casings may have bounced or been inadvertently moved on scene and thus, we do not place great weight on them in this analysis. However, we find it significant that no casings were found on the stairs or near the bottom of the stairs. The distance of the casings from the stairs and the fact that six of the casings were recovered in the same area support a finding that Officer A fired several of his shots from the same general area of the walkway between the bottom of the steps and the curb.

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<sup>75</sup> Civilian 3's IPRA statement does differ slightly from the statement he gave to Detective A in that he told Detective A the officer he saw was crouched by the curb, whereas he told IPRA the officer was in a firing stance. We find these descriptions are similar and clearly distinguish that it is Officer A that Civilian 3 is describing.

<sup>76</sup> We use the directions "left" and "right" to signify the direction that the casings were in relation to the stairs if one were looking toward the house, as Officer A was when he fired.

<sup>77</sup> The seventh shell casing was recovered across the street. There is no evidence suggesting Officer A fired any shots from across the street; thus, we give no weight to the location of the seventh shell casing, as it is likely this casing was simply inadvertently transported in somebody's clothing or shoe across the street.

The Leica scan performed by the Illinois State Police also suggests that Officer A fired at least one of his shots at the bottom of the stairs. ISP was able to measure the trajectory of the bullet of one of the seven shots.<sup>78</sup> Based on these measurements, it is more probable than not that Officer A fired the bullet that created this trajectory line while he was off of the stairs, because if he had fired from on the stairs, he would have had to have been unnaturally low to the ground.<sup>79</sup>

Assistant Medical Examiner Doctor 1's examination and findings were also considered in the determination that Officer A fired all of his shots while off of the stairs. Doctor 1 explained that the trajectory of five of Subject 2's six bullet wounds was slightly upward.<sup>80</sup> Such an upward trajectory would be consistent with Officer A, who is about seven inches taller than Subject 2, firing from the ground while Subject 2 was on the porch.<sup>81</sup>

We note that Officer A also demonstrated during his deposition, using a toy gun, the lowest point that he would have held his weapon when he fired and the highest point he would have held his weapon when he fired. Measurements were then taken from the ground to various points such as the top of the gun and the bottom of Officer A's hand. However, Officer A was not using his actual weapon during these demonstrations, and it seems unlikely that he was holding the toy weapon in the exact spot that he held his actual weapon while firing. For example, when asked to demonstrate how he was holding the weapon when he fired it from the lowest point he fired, Officer A said it was "roughly in this general area." Further, Officer A did not demonstrate the angle he was holding his weapon when he was shooting. In light of all of the foregoing, we have not given great weight to these demonstrations in determining whether Officer A fired his shots while on or off of the steps.

In sum, based on the witnesses' statements and physical evidence, a preponderance of the evidence establishes that Officer A fired all of his shots in the area between the bottom of the steps and the curb.

## II. Whether Officer A's Shots Were Within Policy

Having made our factual findings, we now turn to whether Officer A's shots were within policy. To answer this question, we must determine whether a reasonable officer in Officer A's position would have believed he was in imminent danger of death or great bodily harm at the time he fired his weapon. See General Order 03-02-03, II; 720 ILCS 5/7-5 (West 2014); *Muhammed*, 316 F.3d at 683.

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<sup>78</sup> ISP could only perform this testing for one of the seven shots because only one shot made multiple holes in the structure of the home. The trajectory line that ISP was able to measure had a very slight upward angle. The height from the trajectory line to the top of the stairs measured approximately 2.502 feet, with a five-degree variance, and the height from the trajectory line to the walkway at the bottom of the stairs measured approximately 5.008 feet, with a five degree variance.

<sup>79</sup> While the Leica scan does not definitively rule out Officer A having fired shots from the stairs, it constitutes another piece of evidence that, when taken in conjunction with all of the other evidence, tends to show Officer A fired at least one of his shots while he was off of the stairs.

<sup>80</sup> Attachment 515, pgs. 24-25. The sixth wound was a graze wound and Doctor 1 was not able to determine its directionality (Attachment 515, pg. 25).

<sup>81</sup> Officer A is 6'1" (Att. 216), while Subject 2 was approximately 5'6" (Att. 221).

In doing so, we find a reasonable officer would not have believed he was in danger of death or great bodily harm where (1) Subject 2 did not swing the bat, (2) the furthest distance Subject 2 advanced toward any officer was the area right outside of the vestibule, and (3) Officer A fired all of his shots when he was standing in the area between the bottom of the steps and the curb. Further, Officer A's path of retreat was unobstructed and he could have continued to safely create distance between himself and Subject 2. Accordingly, all of Officer A's shots were not within policy. Further, even if we were to make alternate factual determinations and find that Subject 2 did swing the bat or that Officer A did fire some of his shots while on the stairs, we would still find that Officer A's last shot was outside of policy.

#### A. All of Officer A's Shots Were Not Within Policy

First, based on the factual findings that we have previously detailed, we find a reasonable officer in Officer A's position would not have believed he was in imminent harm of death or great bodily harm at the time Officer A began firing his weapon.

Unlike a gun, a bat is not a *per se* deadly weapon. See *People v. Carter*, 410 Ill. 462, 465 (1951). Instead, whether a bat is considered a deadly weapon depends on the manner in which it is used. See *id.*; see also *People v. Whitt*, 140 Ill. App. 3d 42, 49 (1986). Here, Subject 2 was holding the bat above his shoulder and was not swinging it. Accordingly, Subject 2 was not using the bat in such a manner as to make it a deadly weapon. Moreover, per Officer A's IPRA statement and deposition testimony, he did not have any information from which a reasonable officer would believe Subject 2 planned to swing the bat at Officer A. Officer A said that he knew only that he was responding to a domestic disturbance and that somebody possibly possessed a bat.<sup>82</sup> Officer A had no description of the victim or possible offender.<sup>83</sup> Officer A also did not describe having any information that Subject 2 had previously swung the bat at somebody, that he had been acting violently before the incident, or that he had a history of acting violently.<sup>84</sup> Further, the evidence establishes Subject 2 did not make any verbal threats to the officers when they arrived. Officer A told IPRA that Subject 2 did not yell, scream, make noises, or otherwise say anything to the officers.<sup>85</sup> Officer A also said that he did not hear any yelling, screaming, or discussions taking place in the home as Subject 2 was coming down the interior stairs.<sup>86</sup>

Further, Officer A had successfully created several feet of distance between himself and

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<sup>82</sup> Attachment 487, pgs. 14, 19; Attachment 496, pg. 141

<sup>83</sup> In his deposition, Officer A agreed that he did not know who had called 911, he did not know how many people were in the residence, and he did not know who was involved in the domestic disturbance, including whether there were adults or minors involved (Attachment 496, pg. 141).

<sup>84</sup> In determining whether Officer A's actions were reasonable, we consider only the information he knew at the time he used force at Subject 2. See, e.g., *Abbot v. Sangamon County, Illinois*, 705 F.3d at 724 ("[t]he reasonableness of the force used depends on the totality of the facts and circumstances known to the officer at the time the force is applied"). COPA learned through its extensive investigation that Subject 2 had a history of mental health concerns leading up to this incident. However, Officer A did not know of Subject 2's mental health history; accordingly, Subject 2's mental health concerns could not have factored into Officer A's belief as to whether he was in imminent danger of death or great bodily harm. Officer A had never interacted with Subject 2 before (Attachment 487, pg. 50), and no references were made to Subject 2's mental health history in the CPD's dispatched communication to Officers A or B.

<sup>85</sup> Attachment 487, pgs. 22, 44.

<sup>86</sup> Attachment 487, pg. 44.



Subject 2 at the time he started to fire from the bottom of the stairs. This distance meant that even if Subject 2 decided to swing the bat from the position he was holding it above his shoulder, he was not in striking distance of Officer A. This distance also meant that if Subject 2 had started to advance toward Officer A with the bat, Officer A would have had time to either continue creating additional distance or to fire his weapon before Subject 2 struck him. This is especially true because Officer A already had his gun unholstered. Thus, in light of the distance between Subject 2 and Officer A in the moments before Officer A began firing his weapon, a reasonable officer in Officer A's position would not have believed Subject 2 posed an immediate threat. See *Muhammed*, 316 F.3d at 683 (an officer can reasonably use deadly force when an officer believes the suspect's actions place him "in *imminent* danger of death or serious bodily injury" (emphasis added)).

In sum, a reasonable officer in Officer A's position would not have believed he was in imminent danger of death or great bodily harm at any time that Officer A fired his weapon.

**B. Alternatively, even if Subject 2 Swung The Bat or Advanced Onto The Porch, and Even If Officer A Fired While on The Stairs, Officer A's Last Shot Was Not Within Policy**

Alternatively, even if we were to modify our factual findings and determine that (1) Subject 2 did initially swing the bat, (2) Subject 2 advanced onto the porch, and/or (3) Officer A started firing while he was on the stairs, we would still find that Officer A's final shot was not within policy.

Officer A clearly stated in his deposition that Subject 2 was in the vestibule when Officer A fired his last shot, which is corroborated with the location of Subject 2's body in the vestibule. The closest that Officer A could have been standing at the time he fired his last shot, based on all his statements and testimony, was at the bottom of the steps.<sup>87</sup> This is corroborated by the physical evidence and all of the witness statements. As we have detailed, the distance between Subject 2 and Officer A at this point was too great for Officer A to have reasonably believed Subject 2 still presented an imminent threat. This is particularly true if Subject 2 was retreating at the time that Officer A fired at him in the vestibule. Thus, even if we were to modify our factual findings, we would continue to find that Officer A's final shot was outside of policy.

In sum, we find by a preponderance of the evidence that Officer A's use of deadly force was NOT WITHIN POLICY. Accordingly, Allegations 1 and 5 are SUSTAINED.<sup>88</sup>

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<sup>87</sup> The closest account that Officer A gave was in his statement to Detective A. According to Detective A's report, Officer A said he was stepping backwards down the stairs while discharging his weapon and stopped at the bottom of the stairs on the walkway leading to the house.

<sup>88</sup> We recognize that the Cook County State's Attorney's Office declined to file criminal charges against Officer A. However, the CCSAO was evaluating whether to pursue charges on a case which would ultimately have to meet the burden of "beyond a reasonable doubt, which is a higher standard than the preponderance of the evidence standard that applies to administrative decisions. Our decision is therefore not in conflict with, nor are we constrained by, the CCSAO's decision.

**ALLEGATIONS 3 and 4**

We turn to Allegations 3 and 4. Allegation 3 is that Officer A fired multiple times into a home occupied by persons who would be at risk of injury or death. Allegation 4 is that Officer A fired in the direction of Subject 1, which resulted in her death.

Because we have found that Officer A was not justified in firing his weapon, we find that Officer A was acting outside of policy when he fired multiple times into the home and fired in the direction of Subject 1. All of the evidence referenced in the earlier analysis were considered in reaching this conclusion as well. Accordingly, Allegations 3 and 4 are SUSTAINED.

**ALLEGATIONS 2 and 6**

Next, we address Allegation 2, that Officer A failed to provide Subject 2 with medical attention, and Allegation 6, that Officer A failed to provide Subject 1 with medical attention.

**Legal Standard**

General Order 03-02-06 sets forth the duties an officer must undertake when he discharges a firearm. These duties include notifying the Office of Emergency Management and Communications (OEMC) immediately and completing a TRR and any other reports. CPD officers are not, however, required to provide medical care.

**Analysis**

Officer A acknowledged in his IPRA statement that he did not provide Subject 2 or Subject 1 with medical attention, other than to call for an ambulance. He explained he did not have gloves or equipment and he was not a trained medic or EMT, though he had taken tourniquet training and a basic life savers course while he was a Marine. However, as we have detailed, CPD officers are not required to provide medical care. Accordingly, Allegations 2 and 6 are EXONERATED.

**ALLEGATION 7**

Finally, we consider Allegation 7, that Officer A failed to ensure his taser certification was current from on or about February 6, 2014, through March 16, 2016.

**Legal Standard**

General Order U04-02 requires that CPD members qualify annually with all Taser devices.

**Analysis**

In his deposition, Officer A stated that his Taser qualification had expired on December 26, 2015, and that he had not had a chance to complete the annual requirement to re-qualify.<sup>89</sup> Similarly, in his IPRA statement, Officer A said that his Taser certification had lapsed on the date

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<sup>89</sup> Attachment 496, pg. 43.

of the incident.<sup>90</sup> In a December 2017 statement to COPA, Officer A acknowledged making the aforementioned statements, to the best of his knowledge, and further acknowledged that a timeframe existed between February 2014 and approximately March 2016 that he allowed his taser certification to lapse. When asked whether he was informing COPA that he allowed his Taser certification to lapse, Officer A simply stated that he did not allow it to lapse intentionally. Officer A's training records also show that he completed taser certification on February 1, 2013, and did not complete it again until March 17, 2016.<sup>91</sup>

Based on the foregoing, the evidence establishes that Officer A failed to ensure his taser certification was current from on or about February 6, 2014, through March 16, 2016. Accordingly, Allegation 7 is SUSTAINED.

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Deputy Chief Administrator A

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<sup>90</sup> Attachment 487, pg. 70.

<sup>91</sup> Attachment 520.